



M E M O R A N D U M

**City of Austin
Financial Services Department
Purchasing Office**

DATE: May 20, 2019
TO: Memo to File
FROM: John Besser, Procurement Specialist III
RE: MA 7200 NA190000146

This MA was created as a payment mechanism only. The original contract is administered, maintained, and located with Austin Housing Finance Corporation (AHFC) or Neighborhood Housing & Community Development (NHCD). This contract was awarded by AHFC under its authority and according to its rules.

Description: Maintenance and Repair, Residential Buildings
Croslin Court Condominiums
Vendor: Jese Real Estate, LLC.



Recommendation for Action

File #: 18-4080, Agenda Item #: 2.

3/7/2019

Posting Language

Authorize negotiation and execution of a loan agreement with JESE Real Estate, or an affiliated entity, to assist with acquisition and rehabilitation of an affordable multi-family condo development located at 300 East Croslin Street (to be known as Croslin Court) in an amount not to exceed \$538,355.

Lead Department

Neighborhood Housing and Community Development.

Fiscal Note

This item has no fiscal impact.

For More Information:

Rosie Truelove, Treasurer, Austin Housing Finance Corporation, 512-974-3064; Mandy DeMayo, Community Development Administrator, Neighborhood Housing and Community Development, 512-974-1091.

Additional Backup Information:

This action authorizes the General Manager to negotiate and execute a loan agreement with the JESE Real Estate, or an affiliate, for a loan. The proposed funding source for the loan is U.S. Department of Housing and Urban Development (HUD) Community Development Block Grant (CDBG) dollars. The property is located at 300 East Croslin Street in District 4.

Proposed Project

The purpose of the loan is to provide funding to acquire and rehabilitate Croslin Court, a 20-unit apartment complex. After rehabilitation, the developer intends to construct an additional housing unit and convert all 21 units to condominiums. 17 of the 21 units will be sold as affordable homes to households earning at or below 80% of Median Family Income (MFI), and will carry a 99-year affordability period.

JESE Real Estate

JESE Real Estate is a newly formed entity with a mission to provide affordable housing in Austin. Principals in JESE Real Estate have combined experience that includes: the purchase and sale of eight residential properties in Austin over the last five years, as well as participation in over 40 real estate transactions working with buyers, sellers, and licensed real estate agents in Texas and California.

For more information on the proposed project, as well as socioeconomic characteristics and amenities in the surrounding area, please see the project's Application and Development Information Packet here:

<<http://austintexas.gov/page/fy-17-18-funding-applications>>.



Austin Housing Finance Corporation

MEMO

P.O. Box 1088, Austin, TX 78767-1088

Dawn Perkins, Business, Process Specialist

Phone: (512) 974-6001; Email: dawn.perkins@austintexas.gov

Date: May 15, 2019

To: Finance Department (email complete package to Alan)

Subject: Croslin Court Condominiums

Request: Request for New Master Agreement (MA) and new DO Number

Vendor: **V00000959709 – Vendor ID**
JESE REAL ESTATE, LLC
7606 BELLFLOWER COVE
AUSTIN, TX

Total Loan Amount:	\$538,355
Term:	May 7, 2019 through May 7, 2024
Commodity Code:	90962 Maintenance And Repair, Residential Buildings
Reporting Code:	50 Loans

This memo requests that Finance start the process to create an RQM for a new MA contract between **JESE REAL ESTATE, LLC** and **AHFC** in the amount of **\$538,355** as well as to forward the contract package (attached) to Central Purchasing and request MA number (after RQM is established).

Assistance is provided through a deferred-payment forgivable loan in the amount of \$538,355 in Housing Trust Funds proceeds, to be used only for the rehabilitation and construction costs of Croslin Court, a twenty (20) unit apartment complex located at 300 East Croslin Street, Austin, Travis County, Texas 78752. Croslin Court is to be converted and sold as condominiums. One unit of new construction shall be included in this Project. Seventeen (17) of the converted condominiums will be sold to Eligible Buyers or Eligible Households whose total household incomes are at or below 80% of Median Family Income (MFI) for the Austin-Round Rock-San Marcos Metropolitan Statistical Area ("Affordable Units"). Four (4) of the converted condominiums may be sold at market rates ("Market Units").

Please find attached the loan's Project Timeline for proposed project completion timelines.

After the MA has been established, please request Finance set up a DO number using the below funding and provide us with the new MA and DO issuance documents as soon as they are approved.

Funding Source:	Amount:	Approved Funding Line:
Housing Trust Funds	\$538,355	7009-7200-B317-6830

It is requested MA set up to be completed by Wednesday May 22, 2019.

Please let me know if you have questions.

Dawn Perkins, MA
Business Process Specialist
Neighborhood Housing and Community Development Department
P.O. Box 1088
Austin, Texas 78767
512-974-6001

**Ownership Housing Development Assistance Program
Loan Agreement**

**JESE REAL ESTATE, LLC
Croslin Court**

Effective Date: May 7, 2019

THIS OWNERSHIP HOUSING DEVELOPMENT ASSISTANCE PROGRAM LOAN AGREEMENT (the "Loan Agreement"), is between JESE REAL ESTATE, LLC, a Texas limited liability company (the "Borrower"), and the AUSTIN HOUSING FINANCE CORPORATION, a Texas public, nonprofit corporation organized and operated under Chapter 394, Texas Local Government Code (the "AHFC").

RECITALS

WHEREAS, Borrower or its Affiliate submitted an Application for Financing for Homeownership Projects, dated October 30, 2018 ("Application"), and desires AHFC to provide a Loan to Borrower in accordance with the Ownership Housing Development Assistance Program ("Program"); and

WHEREAS, AHFC has received certain funds from the City of Austin which are proceeds from the City's Housing Trust Fund (the "Funds"); and

WHEREAS, AHFC intends to use a portion of the Funds to fund the Loan to Borrower; and

WHEREAS, Borrower agrees that the Property shall be encumbered with certain covenants and restrictions running with the land as a result of entering into this Loan Agreement with AHFC; and

WHEREAS, the Loan is for the purpose of implementing and carrying out the Project as further described in the attached Exhibit "B" (Statement of Work and Budget), including rehabilitation and/or making improvements to the Property and achieving the obligations of Borrower under the Program.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties agree as follows:

Section 1 DEFINITIONS & RECITALS. As used in this Loan Agreement and any attachment or exhibit incorporated in it, the terms defined in the Ownership Housing Development Assistance Program Definitions attached as Exhibit "A" to this Loan Agreement and by this reference incorporated in it have the meanings assigned to each term. The Recitals are incorporated into the Loan Agreement.

Section 2 PURPOSE AND AMOUNT OF LOAN. The Loan is for the purpose of implementing and carrying out the Project as further described in the Exhibit "B" (Statement of Work and Budget), including rehabilitation of the Property and achieving the obligations of Borrower under the Program and the Application. Exhibit "B" is incorporated into this Agreement as if set forth at length.

Section 3 THE NOTE. The Loan to be made hereunder shall be evidenced by a promissory note dated of even date with this Loan Agreement (the "Note").

Section 4 TERMS OF PAYMENT. The Loan to be made hereunder shall bear interest at the rate specified in the Note and shall be paid in accordance with the terms and conditions of the Note of even date with this Loan Agreement.

Section 5 TERM. The term of this Loan Agreement and the Loan shall begin on the Effective Date of this Loan Agreement and end on the maturity date stated in the Note.

Section 6 RIGHTS AND OBLIGATIONS. AHFC and Borrower, hereby expressly reserve all rights to jointly amend any provisions of this Loan Agreement, to consent to or waive any departure from the provisions of this Loan Agreement, to amend or consent to or waive departure from the provisions of the Note, and to release or otherwise deal with any collateral security for payment of the Note.

Section 7 PERFORMANCE AND COMPLIANCE WITH ALL LAWS.

- A. Agreement to Perform.** Borrower agrees to perform the Project and to produce reports as necessary until completion of the Project in accordance with the terms and conditions of this Loan Agreement.
- B. Prevailing Documents.** In the event any conflict should arise between and/or among the terms of this Loan Agreement, the other Loan Documents, the Program Guidelines and the Application, the Loan Agreement shall prevail, then the other Loan Documents, then the Program Guidelines and then the Application.
- C. Performance within Legal Requirements.** It is expressly understood that Borrower's performance shall be in strict compliance with all Legal Requirements, which in no way is meant to constitute a complete compilation of all duties imposed upon Borrower by law or administrative ruling or to narrow the standards which Borrower must follow. Borrower shall promptly refund any funds not expended in accordance with the Legal Requirements or the Loan Documents.
- D. Legal Requirements Governing Property and Improvements.** The Land and the Improvements and the intended use thereof by Borrower comply, and shall continue to comply, with all Legal Requirements, including, without limitation, all applicable restrictive covenants, zoning ordinances, subdivision and building codes, flood disaster laws, applicable health and environmental laws and regulations and all other ordinances, orders or requirements issued by any state, federal or municipal authorities having or claiming jurisdiction over the Property.

- E. **Compliance with Legal Requirements.** Borrower will promptly and faithfully comply with, conform to, and obey all Legal Requirements, whether the same shall necessitate structural changes in, improvements to, or interfere with the use or enjoyment of, the Property.

Section 8 CONDITIONS OF CLOSING. The obligation of AHFC to make a loan as provided in this Loan Agreement is subject to the receipt by AHFC from Borrower of the Note in compliance with the terms hereof and, in AHFC's sole discretion, to the following additional conditions precedent:

- A. **Truth and Accuracy.** The truth and accuracy, as of the Effective Date of this Loan Agreement, of all representations and warranties made herein by Borrower and the receipt by AHFC of such documents, certificates of officers of Borrower, and such other evidence, as AHFC reasonably shall have requested respecting the meeting of these conditions.
- B. **Receipt of Documents.** The receipt by AHFC from Borrower of the additional Loan Documents executed by Borrower and copies of all other documents required in connection with this Loan Agreement and the transactions contemplated thereby, or respecting the business and affairs of Borrower, that AHFC may reasonably have requested.
- C. **Effective Date of Agreement.** The receipt by AHFC from Borrower of the Loan Documents, each dated effective the same date as this Loan Agreement, executed by Borrower, satisfactory in form and substance to AHFC and certified, when appropriate, by proper corporate officers and Governmental Authorities.
- D. **Payment of Closing Costs.** The payment by the Borrower of all closing costs and expenses.

Section 9 APPLICATION OF PROCEEDS.

- A. **Purpose of Loan.** Borrower agrees that it will apply the funds received by it under this Loan Agreement solely for the purpose set forth in Section 2 of this Loan Agreement.
- B. **Payment of Additional Project Costs.** Borrower agrees to provide additional, unencumbered funds to pay all additional project costs incurred as a result of cost overruns or unanticipated expenses necessary to complete the Project according to the terms and conditions of this Loan Agreement.

Section 10 CONDITIONS OF LOAN AND DISBURSEMENT OF LOAN PROCEEDS. The making of the Loan and each disbursement of the Loan Proceeds hereunder shall be subject to the following conditions precedent:

- A. **True and Correct Statements.** All of the representations and warranties contained in the Loan Documents shall be true and correct in all material respects on and as of the Date of this Loan Agreement and continuing to be true and correct on the date of each disbursement of a payment.
- B. **Satisfactory Form of Documents.** All actions undertaken in connection with the transaction contemplated by the Loan Documents and all documents incidental thereto shall be satisfactory in form, scope and substance to AHFC, and AHFC shall have received copies of

all documents which it may have requested in connection with said transaction in form, scope and substance reasonably satisfactory to it.

C. Approvals and Consents. All necessary approvals or consents, if any such approvals or consents are required of Governmental Authorities having jurisdiction with respect to the Project, shall have been obtained.

D. Corporate Authority. If Borrower, or entity constituting part of Borrower, or any guarantor of the Loan to be made hereunder, is a corporation, there shall be delivered to AHFC (with respect to each such corporation, if there be more than one) a copy of the record(s) of minutes of the Board of Directors of each such corporation specifically authorizing its officers to execute this Loan Agreement and all other Loan Documents necessary for the consummation of this transaction. The Secretary or Assistant Secretary of such corporation(s) shall certify the record(s) of the minutes of the Board of Directors to be true.

E. Approvals of other parties. All necessary approvals, releases, or consents required with respect to this transaction by any mortgagee or other party having any interest in the Property shall have been obtained, and failure to have obtained such consents shall constitute default hereunder.

F. Good Standing. None of the following exists:

1. an Event of Default; or
2. the requested funds, plus the sum of (i) previous released Loan Proceeds (including retained amounts deemed to have been advanced) and (ii) other sums disbursed by AHFC under this Loan Agreement exceeds the total authorized Loan Amount evidenced by the Note; or
3. an order or decree in any court of competent jurisdiction enjoins or prohibits Borrower, any person or AHFC or any of them from performing their respective obligations under this Loan Agreement.

G. Project Costs. Regarding the Project, no costs or any portion thereof:

1. has been paid, reimbursed or is subject to payment or reimbursement, from any source other than those set out in the Statement of Work and Budget; or
2. was incurred other than in substantial compliance with the terms of this Loan Agreement, including all exhibits attached hereto and the Legal Requirements; or
3. incurred with respect to any activity of Borrower after AHFC requested that Borrower furnish data concerning such action prior to proceeding further, unless and until Borrower was thereafter advised by AHFC to proceed.

Section 11 [RESERVED.]

Section 12 ALLOWABLE COSTS. Costs will be considered allowable only if incurred directly and specifically in the performance of and in compliance with this Loan Agreement and in conformance with the standards and provisions of the Obligations and the Approved Budget. Under no circumstances shall any portion be used for any purpose other than the payment of those costs and fees approved by the AHFC as legitimately relating to the cost of completing the work required by this Loan Agreement, or for an amount in excess of the amount authorized to be paid Borrower in the Approved Budget unless otherwise agreed to in writing by AHFC.

Section 13 SECURITY AND AFFORDABLE HOUSING REQUIREMENTS.

- A. Note and Deed of Trust.** Borrower shall execute and deliver to AHFC at closing of the Loan the Promissory Note ("Note") and the Deed of Trust and Security Agreement and Financing Statement ("Deed of Trust") as security for payment of the Note and performance of the Obligations under the Loan Documents. The Note and Deed of Trust shall be in a form satisfactory to AHFC and shall provide that, in the event of default by the Borrower in the payment of the Indebtedness or the performance of any Obligations, AHFC may, at its sole option, in addition to all other remedies, take possession of the Property given as security, provided AHFC has given Borrower the right to cure the default as provided in subsection 21.B. of this Loan Agreement and such default is continuing.
- B. Restrictive Covenants.** Borrower shall also execute and deliver to AHFC at closing of the Loan a Declaration of Restrictive Covenant Regarding Affordable Housing Requirements substantially similarly to Exhibit C to this Agreement, or other restrictive covenant acceptable to AHFC (the "Covenant").

Section 14 REPRESENTATIONS. In order to induce the AHFC to make the Loan hereunder Borrower represents and warrants as follows:

- A. No Litigation.** Except as disclosed in writing to AHFC, there are no (i) judicial, administrative, mediation or arbitration actions, suits, or proceedings, at law or in equity, before any Governmental Authority or arbitrator pending or threatened against or affecting Borrower, any Signatory Party, or involving the Property, (ii) outstanding or unpaid judgments against Borrower, any Signatory Party, or the Property, or (iii) defaults by Borrower with respect to any order, writ, injunction, decree, or demand of any Governmental Authority or arbitrator. Borrower or any Signatory Party are not a party to any action, suit or proceeding pending or concluded, nor, to the knowledge and good faith belief of the Borrower, is Borrower or any Signatory Party threatened with any suit or proceedings which may bring into question the validity of the transaction herein contemplated or might result in any adverse change in the business or financial condition of the Borrower or any Signatory Party from that evidenced by the financing statement provided to AHFC by Borrower or any Signatory Party at or before closing.
- B. No Bankruptcy.** No bankruptcy or insolvency proceedings are pending or contemplated by Borrower or any Signatory Party or, to the best knowledge, information, and belief of Borrower or any Signatory Party, against Borrower or any Signatory Party or by or against any endorser, cosigner or guarantor of the Note.

- C. Legal Authority.** Borrower represents and warrants that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into the Loan Documents. The person(s) executing the Loan Documents on behalf of Borrower represents and warrants that they have been fully authorized by Borrower to execute the Loan Documents on its behalf and to bind Borrower legally to all the terms, performances and provisions of the Loan Documents. If there is a dispute as to the legal authority of either Borrower or of the person signing the Loan Documents to enter into the Loan Documents, AHFC shall have the right, at its option, to either temporarily suspend or permanently terminate this Loan Agreement. If AHFC has suspended or terminated this Loan Agreement for the reasons enumerated in this subsection, Borrower is liable to AHFC for any money it has received from AHFC for performance of this Loan Agreement.
- D. No Default.** Borrower or any Signatory Party is not in default on any obligations, covenants, or conditions contained in any bond, debenture, note, or other evidence of indebtedness or any mortgages or collateral instruments securing the same. Borrower also covenants that the making of this Loan Agreement and the consummation of the transaction contemplated herein will not violate any provision of law or result in any breach or constitute a default under any agreement to which Borrower or any Signatory Party is presently a party, or result in the creation of any lien, charge or encumbrance upon any of its property or its assets other than may be specifically allowed under the Loan Documents including without limitation the AHFC's liens and security interests.
- E. No Assignment.** Borrower and each Signatory Party may not assign this Loan Agreement or any other Loan Document or any of Borrower's or Signatory's rights under it without AHFC's prior written consent, and any attempted assignment is void.
- F. Taxes.** Borrower and each Signatory Party have filed all federal, state, county, municipal, and city income and other tax returns required to have been filed by them (including, without limitation, those required under the Tax Code) and have paid all taxes and related liabilities which have become due pursuant to such returns or pursuant to any assessments received by them. Neither Borrower nor any Signatory Party knows of any basis for any additional assessment in respect of any such taxes and related liabilities. Borrower and each Signatory Party believe that their respective tax returns properly reflect the income and taxes of Borrower and each Signatory Party for the periods covered thereby, subject only to reasonable adjustments required by the Internal Revenue Service or other applicable tax authority upon audit. Borrower or any Signatory Party shall promptly and completely file all tax returns which are required and has made or will make provision for the payment of all taxes which have or may become due pursuant to said returns or pursuant to any assessments received by Borrower or any Signatory Party. Borrower or any Signatory Party covenants that no tax liability has been asserted against Borrower or any Signatory Party by the Internal Revenue Service or any other taxing authority for taxes in excess of those already paid and Borrower or any Signatory Party knows of no basis for any such deficiency assessment.
- G. Correct Information.** In the event reports required to be submitted by Borrower pursuant to this Loan Agreement, are deemed by AHFC to be incomplete or unsatisfactory, Borrower agrees to make such revisions or changes as may be required by AHFC and at no additional cost to AHFC.

H. Mailing Address. Borrower's mailing address, as set forth in subsection 21.A. of this Loan Agreement or as changed pursuant to the provision hereof, is true and correct.

I. No Reliance on AHFC. Borrower is experienced in the ownership and operation of properties similar to the Property, and Borrower and AHFC have and are relying solely upon Borrower's expertise and business plan in connection with the ownership and operation of the Property. Borrower is not relying on AHFC's expertise or business acumen in connection with the Property.

J. Environmental and Hazardous Substances. Without regard to whether AHFC has, or hereafter obtains, any knowledge or report of the environmental condition of the Property:

1. The Property and the operations conducted thereon do not violate any applicable law, statute, ordinance, rule, regulation, order, or determination of any Governmental Authority or any restrictive covenant or deed restriction (recorded or otherwise), including without limitation all applicable zoning ordinances and building codes, flood disaster laws and Environmental Laws.
2. Without limiting subsection 14.J.1., the Property and operations conducted thereon by the current owner or operator of such Property, are not in violation of or subject to any existing, pending, or threatened action, suit, investigation, inquiry, or proceeding by any Governmental Authority or non-governmental entity or person or to any remedial obligations under any Environmental Law.
3. All notices, permits, licenses, or similar authorizations, if any, required to be obtained or filed in connection with the ownership, operation, or use of the Property, including, without limitation, the past or present generation, treatment, storage, disposal, or release of a Hazardous Substance into the environment, have been duly obtained or filed.
4. The Property does not contain any Hazardous Substance.
5. Borrower has taken all steps necessary to determine and has determined that no Hazardous Substances have been generated, treated, placed, held, located, or otherwise released on, under, from, or about the Property.
6. Borrower has not undertaken, permitted, authorized, or suffered and will not undertake, permit, authorize, or suffer the presence, use, manufacture, handling, generation, transportation, storage, treatment, discharge, release, burial, or disposal on, in, under, from or about the Property of any Hazardous Substance or the transportation to or from the Property of any Hazardous Substance.
7. There is no pending or threatened litigation, proceedings, or investigations before or by any administrative agency in which any person or entity alleges or is investigating any alleged presence, release, threat of release, placement on, in, under, from or about the Property, or the manufacture, handling, generation, transportation, storage, treatment, discharge, burial, or disposal on, under, from or about the Property, or the transportation to or from the Property, of any Hazardous Substance.

8. Borrower has not received any notice, and has no actual or constructive knowledge, that any Governmental Authority or any employee or agent thereof has determined, or threatens to determine, or is investigating any allegation that there is a presence, release, threat of release, placement on, in, under, from or about the Property, or the use, manufacture, handling, generation, transportation, storage, treatment, discharge, burial, or disposal on, in, under, from or about the Property, or the transportation to or from the Property, of any Hazardous Substance.
9. There have been no communications or agreements with any Governmental Authority or any private entity, including, but not limited to, any prior owners or operators of the Property, relating in any way to the presence, release, threat of release, placement on, under or about the Property, or the use, manufacture, handling, generation, transportation, storage, treatment, discharge, burial, or disposal on, in, under or about the Property, or the transportation to or from the Property, of any Hazardous Substance.
10. Neither Borrower nor, to the best knowledge, information and belief of Borrower, any other person, including, but not limited to, any predecessor owner, tenant, licensee, occupant, user, or operator of all or any portion of the Property, has ever caused, permitted, authorized or suffered, and Borrower will not cause, permit, authorize, or suffer, any Hazardous Substance to be placed, held, located, or disposed of, on, in, under or about any other real property, all or any portion of which is legally or beneficially owned (or any interest or estate therein which is owned) by Borrower in any jurisdiction now or hereafter having in effect a so-called "superlien" law or ordinance or any part thereof, the effect of which law or ordinance would be to create a lien on the Property to secure any obligation in connection with the "superlien" law of such other jurisdiction.
11. Borrower has been issued all required federal, state, and local licenses, certificates, or permits relating to the Property, and Borrower and its facilities, business assets, property, leaseholds, and equipment are in compliance in all respects with all applicable federal, state, and local laws, rules, and regulations relating to, air emissions, water discharge, noise emissions, solid or liquid waste disposal, hazardous waste or materials, or other environmental, health, or safety matters.

K. Location of Property. The Land is located wholly within the corporate limits of the City of Austin, Texas.

L. Utilities Access. All utility services necessary and sufficient for the full use, occupancy, operation and disposition of the Land and the Improvements for their intended purposes are available to the Property, including water, storm sewer, sanitary sewer, gas, electric, cable and telephone facilities, through public rights-of-way or duly recorded perpetual private easements; all streets, roads, highways, bridges and waterways necessary for access to and full use, occupancy, operation and disposition of the Land and the Improvements have been completed, have been dedicated to and accepted by the appropriate municipal authority and are open and available to the Land and the Improvements without further condition or cost to Borrower; all curb cuts, driveways and traffic signals shown on the survey delivered to AHFC prior to the execution and delivery of this Loan Agreement are existing and have been fully approved by the appropriate Governmental Authority.

Section 15 AFFIRMATIVE COVENANTS. Until payment in full of the Note and all of the other payments due AHFC hereunder, and the performance of all of the terms, conditions and provisions of the Loan Documents, and, with respect to the Covenant required by this Loan Agreement, during the Restricted Period, Borrower and its assigns shall cause the following to be done, as applicable to the Project:

- A. Compliance Information.** Borrower will deliver to AHFC within ten (10) calendar days after its receipt of any written request therefor, such information as the AHFC may reasonably determine in its sole discretion necessary to determine whether the Borrower is complying with its covenants and agreements contained in the Loan Documents or whether an Event of Default has occurred. So long as Borrower commences the process of obtaining such information and notifies AHFC of such action within the ten (10) calendar day period and proceeds diligently toward obtaining such information, Borrower shall have an additional twenty (20) calendar days to furnish such information to AHFC.
- B. Work Required.** Borrower will perform or cause to be performed the work described in this Loan Agreement with respect to the Project, including, without limitation, the work described in the Exhibit "B" (Statement of Work and Budget).
- C. Subcontracting.** Borrower agrees that any work or service which is allowed to be subcontracted under this Loan Agreement shall be subcontracted by written contract or agreement and shall be subject by its terms, unless specific waiver is granted, in writing, by AHFC, to each and every provision of this Loan Agreement. Borrower agrees to assume the responsibility for performance and financing compliance by a subcontractor under this Loan Agreement.
- D. No Obligation to Others.** AHFC shall not be obligated or liable under this Loan Agreement to any party other than Borrower for payment of any monies or for provision of any goods or services.
- E. Payment of Amounts Due.** Borrower will pay punctually and fully each installment payment of principal and interest to become due on the Note in accordance with the terms of this Loan Agreement and the Note.
- F. Payment of Impositions.** Borrower will duly pay and discharge, or cause to be paid and discharged, the Impositions not later than the earlier to occur of (i) the due date thereof, (ii) the date any fine, penalty, interest, or cost may be added thereto or imposed, or (iii) the date prior to any date any lien may be filed for the nonpayment thereof (if such date is used to determine the due date of the respective item), and Borrower shall deliver to AHFC a written receipt evidencing the payment of the respective Imposition, except that Borrower shall not be required to pay any such Impositions so long as the validity thereof shall be actively contested in good faith by proper proceedings, provided that any such Imposition shall be placed in escrow during such proceedings and shall be paid forthwith upon a final adjudication and order to pay from a court of competent jurisdiction.
- G. Payment for Labor and Materials.** Borrower will promptly pay all bills for labor, materials, supplies, and specifically fabricated materials incurred in connection with the Property and

never permit to exist in respect of the Property or any part thereof any lien or security interest, even though inferior to the liens and security interests hereof, for any such bill.

- H. Payment of Other Amounts.** Borrower will pay the installments due on all indebtedness with respect to the Property to any other lenders, either heretofore or hereafter incurred or assumed by it when and as the same shall become due and payable, and will observe, perform and discharge all of the covenants, conditions and obligations which are imposed on it by any and all agreements securing or evidencing any encumbrance upon the Property securing this Loan so as to prevent an occurrence of any act or omission which, under the provisions thereof, may be declared to be a default thereunder which, could result in a lien being placed upon the Property. In the event any such payment is not paid, Borrower will immediately provide notice to AHFC describing such default. However, giving such notice will in no way waive any other covenant in the Loan Documents.
- I. Payment of Borrower Expenses.** Borrower will pay on demand all reasonable and bona fide out-of-pocket costs, fees, and expenses and other expenditures, including, but not limited to, reasonable attorneys' fees and expenses, paid or incurred by AHFC or Trustee to third parties incident to this Loan Agreement (including without limitation, reasonable attorneys' fees and expenses in connection with the negotiation, preparation, and execution hereof and of any other Loan Documents and any amendment hereto or thereto, any release hereof, any consent, approval or waiver hereunder or under any other Loan Documents, the making of any advance under the Note, and any suit to which AHFC or Trustee is a party involving the Deed of Trust, the Loan Documents or the Property) or incident to the enforcement of the Indebtedness or the Obligations or the exercise of any right or remedy of AHFC under any of the Loan Documents, and including without limitation:
1. **Expenses.** Borrower will pay all costs and taxes that might be imposed or be determined to be payable in connection with the execution, issuance or delivery of the Loan Documents, or in connection with any modification, amendment or alteration of the terms and provisions thereof, and to hold AHFC and any other holder of the Note harmless against any and all liability with respect to the Loan Documents, all of which agreements of Borrower shall survive payment of the Note.
 2. **Loan Expenses.** If required by AHFC, Borrower will pay in addition to any other amounts a monthly servicing fee due with each installment payment in an amount stated in the Note.
 3. **Expenses of Collection or Enforcement.** If Borrower shall at any time default in making any payment on the Note, Borrower will, to the full extent permitted by law, pay to the holder of the Note, in addition to any other amounts that may be due from Borrower to such holder, an amount equal to the reasonable costs and expenses of collection including reasonable attorney's fees, court costs or enforcement costs incurred by holder in such collection.
 4. **Expenses of Correction by AHFC of Default.** In the event of any default by Borrower in the full performance or observance of any covenant or agreement contained in any of the Loan Documents, AHFC may, upon notice to Borrower at the address and in the manner specified in subsection 21.A. of this Loan Agreement, at AHFC's sole option (but

without any obligation of AHFC to do so), take such steps as reasonably may be deemed by AHFC in its sole discretion, necessary or appropriate to correct or remedy such default in whole or in part, and all costs and expenses incurred by AHFC in taking such steps (including reasonable attorney's fees and court costs) shall, subject to an opportunity to cure such default as provided by subsection 21.B. of this Loan Agreement, be due and payable by Borrower, with interest thereon from time of incurrence thereof by AHFC at the Maturity Rate stated in the Note. The taking of such action shall not be deemed to be a waiver by AHFC of the default of Borrower or a waiver of any other available right or remedy by reason of such default.

- 5. Expenses of Amendments, Waiver, Consents, and Refinancing.** In the event Borrower proposes to take or omit to take any act or action prohibited or required by any provision of the Loan Documents, and Borrower requests AHFC to consent thereto or waive compliance with any such provision, then, in each such case, Borrower will reimburse or pay to AHFC any reasonable expenses incurred by AHFC in connection with such consent or waiver, or such modification or amendment.
- J. Excess Payments.** Borrower shall refund to the AHFC within ten (10) working days of the AHFC's request, any sum of money which has been paid by the AHFC and which AHFC at any time thereafter determines: 1. has resulted in overpayment to Borrower; or 2. is not supported by adequate documentation to fully justify the expenditure.
- K. Repair.** Borrower will keep the Property in reasonably good order and condition and will make all repairs, replacements, renewals, additions, betterments, improvements, and alterations thereof and thereto, interior and exterior, structural and nonstructural, ordinary and extraordinary, foreseen and unforeseen, which are necessary or reasonably appropriate to keep same in such order and condition. Borrower will prevent any act, occurrence, or neglect, which might impair the value or usefulness of the Property for its intended usage. In instances where repairs, replacements, renewals, additions, betterments, improvements, or alterations are required in and to the Property on an emergency basis to prevent loss, damage, waste, or destruction thereof, Borrower shall proceed to repair, replace, add to, better, improve, or alter same, or cause same to be repaired, replaced, added to, bettered, improved, or altered, notwithstanding anything to the contrary contained in subsection 16.B. hereof; provided, however, that in instances where such emergency measures are to be taken, Borrower will notify AHFC in writing of the commencement of same and the measures to be taken, and, when same are completed, the completion date and the measures actually taken.
- L. Protection of Lien Status.** Borrower will protect and preserve the lien and security interest status of the Deed of Trust on the date of execution of this Loan Agreement and will not permit to be created or to exist in respect of the Collateral or any part thereof, unless agreed to in writing by AHFC, any lien or security interest on a parity with, superior to, or inferior to any of the liens or security interests hereof.
- M. Insurance.** Prior to commencing work with respect to the Property, Borrower, in accordance with the Insurance Requirement and at Borrower's own expense, will obtain, maintain and keep in full force and effect insurance coverages upon and relating to the Property with such insurers, in such amounts, in such manner, provide such notices and covering such risks as shall be requested by and satisfactory in writing to AHFC. Borrower agrees to procure such

required insurance coverages and deliver evidence of such coverages to AHFC as required by the Insurance Requirement. In the event any insurance proceeds with respect to a policy described in the Insurance Requirement are paid, such proceeds thereof shall be paid to AHFC to satisfy the balance owing on the Note at the time of the loss; the remainder of the insurance proceeds to be payable to Borrower. If the proceeds of the insurance together with such other funds as are available to Borrower are sufficient to pay for the restoration of the premises, Borrower may apply such funds to such restoration, provided the procedure to release such insurance proceeds for restoration are agreed to in writing between Borrower and AHFC. It is expressly understood and agreed that the Insurance Requirement represents AHFC's minimum requirements. Further, (i) the insolvency, bankruptcy or failure of any insurance company covering Borrower or the Property, (ii) the failure of any insurance company to pay claims occurring, or (iii) any exclusion from or insufficiency of coverage will not limit the amount of recovery AHFC may have in the event of casualty, damage or other occurrence giving rise to a claim under the insurance provided by Borrower under this Loan Agreement.

N. Bonding Requirements.

1. Bonds, when required in the Statement of Work and Budget, must be executed on forms furnished by or acceptable to AHFC. If required, Borrower shall furnish AHFC proof of an adequate bond prior to the earlier of (a) thirty (30) calendar days following the Effective Date of this Loan Agreement or (b) payment of any Loan Proceeds to Borrower by AHFC under this Loan Agreement.
2. If the surety on any bond furnished by Borrower is declared bankrupt or becomes insolvent or its right to do business is terminated in the State of Texas or it ceases to meet the requirements of subsection 15.N.3. of this Loan Agreement, Borrower must substitute immediately another bond and surety, both of which must be acceptable to AHFC.
3. When Performance Bonds and/or Payment Bonds are required in accordance with this Loan Agreement, each bond must be issued in an amount of one hundred percent (100%) of the Note, as security for the faithful performance of all of Borrower's obligations under this Loan Agreement. Performance Bonds and Payment Bonds must be issued by a solvent surety company authorized to do business in the State of Texas, U.S. Treasury listed, and with an A.M. Best rating of A- or better, or otherwise acceptable to AHFC.

O. Condemnation. Borrower will pay, or assign if requested by AHFC, to AHFC to satisfy the balance owing on the Note at the time of receipt of all amounts payable to or received by Borrower from condemnation of all or part of the Property, from private sale in lieu of condemnation, and from damages caused by public works or construction on or near the Property. If the amounts payable to or received by Borrower through the actions described in this subsection, together with such other funds as are available to Borrower, are sufficient to pay for the restoration of the premises, Borrower may apply such funds to such restoration after receiving written concurrence from AHFC.

P. Environmental and Hazardous Substances. Borrower will:

1. not use, generate, manufacture, produce, store, release, discharge, treat, or dispose of on, in, under, from or about the Property or transport to or from the Property any Hazardous Substance or allow any other person or entity to do so;
 2. keep and maintain the Property in compliance with, and shall not cause or permit the Property to be in violation of, any Environmental Law; and
 3. establish and maintain, at Borrower's sole expense, a system to assure and monitor continued compliance with Environmental Laws and the exclusion of Hazardous Substances from the Property, by any and all owners or operators of the Property, which system shall include annual reviews of such compliance by employees or agents of Borrower who are familiar with the requirements of the Environmental Laws and, at the request of AHFC no more than once each year prior to issuance of a Certificate of Occupancy and once every five years thereafter, a detailed review of such compliance of the environmental condition of the Property (the "Environmental Report") in scope satisfactory to AHFC by an environmental consulting firm approved in advance by AHFC; provided, however, that if any Environmental Report indicates any violation of any Environmental Law or a need for Remedial Work, such system shall include at the request of AHFC a detailed review of the status of such violation (a "Supplemental Report") by such environmental consultant. Borrower shall furnish an Environmental Report or such Supplemental Report to AHFC within sixty (60) calendar days after AHFC so requests, together with such additional information as AHFC may reasonably request.
- Q. Notice of Hearings.** Borrower will give AHFC prior notice, in writing, of any public hearing or meeting before any Governmental Authority which may, in any manner, affect the Property.
- R. Inspection of Books and Records.** Borrower shall allow AHFC from time to time to inspect all books and records relating to Borrower's financial condition and to the Indebtedness, and to make and take away copies of such books and records. If Borrower is a corporation, limited liability company, partnership, joint venture, trust or other type of business association, Borrower shall provide Monitors with any and all financial statements and other documents and make any and all disclosures to Monitors with respect to any of the Constituent Parties, as Borrower is required to provide and make, and in the manner required to be provided and made, with respect to Borrower pursuant to this subsection.
- S. Monitoring, Inspection and Audit.** Borrower will permit AHFC to enter the Land and Improvements at all reasonable times, and inspect the Property with or without prior notice to Borrower. AHFC will have the right, at all reasonable hours and without causing any unreasonable interruption to the operations of Borrower, to carry out monitoring and evaluation activities to ensure adherence by Borrower to the provisions of this Loan Agreement and to ensure that the use of any Loan Proceeds paid to Borrower are for eligible purposes in accordance with the Legal Requirements, to inspect and audit all books, accounts, reports, files, records, contracts, and all other papers relating to the Property, the Project or the use of Loan Proceeds; and to be given free access to the Property for the purpose of such monitoring, inspection or audit and also for the purpose of determining the condition of the premises. In addition, Borrower shall provide to AHFC such audited management letters or financial statements as the AHFC may require in their sole discretion.

T. Tax. If at any time any law shall be enacted imposing or authorizing the imposition of any tax upon any rights, titles, liens, or security interests created by the Loan Documents, or upon the Indebtedness or any part thereof (whether pursuant to the Tax Code or otherwise), Borrower will immediately pay all such taxes, provided that if such law as enacted makes it unlawful for Borrower to pay such tax, Borrower shall not pay nor be obligated to pay such tax. Nevertheless, if a law is enacted making it unlawful for Borrower to pay such taxes, then Borrower must prepay the Indebtedness in full within sixty (60) calendar days after demand therefor by AHFC.

U. Statement of Unpaid Balance. At any time and from time to time, Borrower will furnish promptly, upon the request of AHFC, a written statement or affidavit, in form satisfactory to AHFC, stating the unpaid balance of the Indebtedness and that there are no offsets or defenses against full payment of the Indebtedness and the terms hereof, or if there are any such offsets or defenses, specifying them.

V. Borrower's Meetings. Upon request of AHFC, Borrower shall inform AHFC of the dates and times of meetings of its governing body. Such notice shall be delivered to AHFC in a timely manner to give adequate notice and shall also include an agenda and a brief description of the matters to be discussed. Upon request of AHFC, minutes of meetings of Borrower's governing body shall be submitted to AHFC within fifteen (15) calendar days of such request. If Borrower utilizes advisory board(s), notices of meetings and formal minutes of advisory board meetings shall be kept and shall remain on file with Borrower for AHFC's inspection.

W. Confidentiality. Upon authorization from AHFC to render client files anonymous, Borrower agrees to mask client-identifying information in such way that said marking will not in any way obstruct AHFC's monitoring and evaluation duties. Borrower agrees, at all times, to keep confidential all client and personnel identifying information and any information received by Borrower unless required by law to release such information.

X. Personnel Policies. In the event the number of full-time employees of Borrower equals five (5) or more, personnel policies shall be established by Borrower in writing and shall be available for examination by AHFC. Such personnel policies, taken as a whole, shall be no more liberal than AHFC's personnel policies, procedures, and practices, including, without limitation, policies with respect to employment, salary and wage rates, working hours and holidays, fringe benefits (health and hospitalization, retirement, etc.), vacation and sick leave privileges, and travel.

Y. Conflict of Interest.

1. Borrower covenants that neither it nor any member of its governing body presently has any interest or shall acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Loan Agreement. Borrower further covenants that in the performance of this Loan Agreement no person having such interest shall be employed or appointed as a member of its governing body.

2. No officer, member, or employee of AHFC and no member of its governing body who exercises any functions or responsibilities in the review or approval of the undertaking or

carrying out of this Agreement, shall (i) participate in any decision relating to this Loan Agreement which affects his personal interest or the interest of any corporation, partnership, or association in which he has a direct or indirect interest, or (ii) have any interest, direct or indirect, in this Loan Agreement or the proceeds thereof.

Z. Nepotism. Borrower shall not employ in any paid capacity any person who is a member of the immediate family of: (i) a person who is currently employed by Borrower, or (ii) a current AHFC employee who has discretionary authority with respect to this Loan Agreement, or (iii) a member of the AHFC or Borrower's governing body, without prior written approval by AHFC. The term "member of the immediate family" includes: wife, husband, son, daughter, mother, father, brother, sister, grandfather, grandmother, grandson, granddaughter, brother-in-law, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, nephew, niece, first cousin, stepparent, stepchild, half-brother, and half-sister.

AA. Contract Close Out. The contract close out package, together with a final Payment Request, for the time period covered by the last invoice requesting a disbursement of Loan Proceeds, shall be submitted by Borrower to the AHFC with respect to the Project within ninety (90) calendar days following the close of the term of this Loan Agreement, unless extended in writing by the AHFC, using the format as provided to Borrower by the AHFC.

BB. Audit. Borrower agrees to submit to AHFC a complete set of audited financial statements and the auditor's opinion and management letters covering Borrower's fiscal year until the termination of this Loan Agreement and the Note.

1. Borrower, at its expense, shall contract with an independent auditor utilizing a Letter of Engagement. The auditor must be a Certified Public Accountant recognized by the regulatory authority of the State of Texas.
2. Prior to the start of the audit, a letter of engagement between Borrower and their auditor, which details the services to be provided, including the audit requirements of this subsection must be executed. Borrower must provide AHFC two (2) copies of a complete financial audit and the auditor's opinion and management letters within one hundred-eighty (180) calendar days following the end of each Borrower Fiscal Year, unless AHFC approves alternative arrangements in writing.
3. Borrower must provide AHFC with annual audits as required by this subsection until termination of this Loan Agreement, unless waived by AHFC.
4. The expiration or termination of this Loan Agreement shall in no way relieve Borrower of the requirement to complete the above audit requirements in the manner set forth.

CC. Disclosures. If at any time Borrower shall become aware of the existence or occurrence of any financial or economic conditions or natural disasters which might have a Material Adverse Effect, Borrower shall promptly notify AHFC of the existence or occurrence thereof, unless AHFC has actual notice thereof, and of Borrower's opinion as to what effect such may have on the Property or Borrower. Borrower shall also give prompt notice to AHFC, unless AHFC has actual notice thereof, of (1) the serious illness or death of any principal or key employee of Borrower, (2) any litigation or dispute, threatened or pending against or affecting Borrower,

a Signatory Party, or the Property which could have a Material Adverse Effect, (3) any Event of Default, (4) any default by Borrower or any acceleration of any indebtedness owed by Borrower under any contract to which Borrower is a party which could have a Material Adverse Effect, and (5) any change in the character of Borrower's business as it existed on the date hereof which could have a Material Adverse Effect.

DD. Filing Documents. Borrower will file for record the Deed of Trust that secures the Note.

EE. Delivery of Contracts. Borrower will deliver to AHFC a true, correct and complete copy of each Contract within five (5) calendar days after the execution of it by all parties thereto. Within twenty (20) calendar days after a request by AHFC, Borrower shall prepare and deliver to AHFC a complete listing of all Contracts, showing date, term, parties, subject matter, whether any defaults exist, and other information specified by AHFC, of or with respect to each of such Contracts, together with a true, correct and complete copy thereof (if so requested by AHFC).

FF. Further Assurances and Corrections. From time to time, at the request of AHFC, Borrower will (1) promptly correct any defect, error, or omission which may be discovered in the contents of this Loan Agreement or in any other Loan Document or in the execution or acknowledgment thereof; (2) execute, acknowledge, deliver, record and/or file such further instruments (including, without limitation, amendments to this Loan Agreement, further deeds of trust, security agreements, financing statements, continuation statements and assignments of rents) and perform such further acts and provide such further assurances as may be necessary, desirable, or proper, in AHFC's opinion, to carry out more effectively the purposes of this Loan Agreement and the Loan Documents and to subject to the absolute assignments, liens and security interests hereof and thereof any property intended by the terms hereof or thereof to be covered hereby or thereby, including without limitation, any renewals, additions, substitutions, replacements, or appurtenances to the Property; (3) execute, acknowledge, deliver, procure, file, and/or record any document or instrument (including without limitation, any financing statement) deemed advisable by AHFC in AHFC's sole discretion to protect the liens and the security interests herein granted against the rights or interests of third persons; and (4) pay all costs connected with any of the foregoing.

Section 16 NEGATIVE COVENANTS. Borrower hereby unconditionally covenants and agrees with AHFC until the entire Indebtedness shall have been paid in full and all of the Obligations shall have been fully performed and discharged as follows:

- A. Use Violations.** Borrower will not use, maintain, operate, or occupy, or allow the use, maintenance, operation, or occupancy of, the Property in any manner which (1) violates any Legal Requirement, (2) may be dangerous, unless safeguarded as required by law and/or appropriate insurance, (3) constitutes a public or private nuisance, or (4) makes void, voidable, or cancelable, or increases the premium of, any insurance then in force with respect thereto.
- B. Waste: Alterations.** Borrower will not commit or permit any waste or impairment of the Property and will not (subject to the provisions of subsection 7.D. and 16.K. hereof) without the prior written consent of AHFC, make or permit to be made any alterations or additions to the Property of a material nature.

- C. Replacement of Fixtures and Personalty.** Borrower will not, without the prior written consent of AHFC, permit any of the Fixtures or Personalty to be removed at any time from the Land or Improvements unless the removed item is removed temporarily for purposes of maintenance and repair or, if removed permanently, is replaced by an article of equal suitability and value, owned by Borrower, free and clear of any lien or security interest except as may be approved in writing by AHFC.
- D. No Drilling.** Borrower will not, without the prior written consent of AHFC, permit any drilling or exploration for or extraction, removal, or production of, any Minerals from the surface or subsurface of the Land regardless of the depth thereof or the method of mining or extraction thereof.
- E. Additional Obligations.** Borrower shall not create or incur any additional liability, whether contingent or non-contingent, with respect to the Property that is secured by a lien on the Property, except as specifically allowed or contemplated pursuant to the Loan Documents or, in writing, by the AHFC.

Section 17 EVENTS OF DEFAULT. The principal indebtedness evidenced by the Note or the unpaid balance thereof at the time outstanding, shall be due and payable at the election of the AHFC if any one or more of the following events shall occur for any reason whatsoever, and whether such occurrences shall be voluntary, involuntary or come about or be effected by operation of law, or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any administrative or Governmental Authority and is not cured or corrected within the times and in the manner required to cure or correct such event of default by Borrower as required by subsection 21.B of this Loan Agreement:

- A. Payment of Indebtedness.** Default shall be made in the timely and complete payment (by payment or by credit as provided in the Note) of any installment or portion of the Indebtedness as and when the same shall become due and payable, whether at the due date thereof stipulated in the Loan Documents, upon acceleration or otherwise; or
- B. False Representation.** Any representation or warranty made by the Borrower herein or any statement or representations made in any certificate, statement or opinion delivered to the AHFC pursuant to this Loan Agreement, the Note, or any other Loan Documents shall prove to have been incorrect in any material respect as of the date made; or
- C. Performance of Obligations.** Default shall be made in the performance or observance of any of the Obligations; or
- D. Default Under Other Lien Documents.** Borrower shall default or commit an event of default under and pursuant to any other mortgage or security agreement which covers or affects any part of the Property; or
- E. Abandonment.** Borrower abandons or removes all or substantially all of the Improvements, Personalty or Fixtures without written approval from the AHFC; or
- F. Discontinuance of Operations.** Borrower vacates, or discontinues operations of or from, any substantial portion of the Property without written approval from the AHFC; or

- G. Bankruptcy or Insolvency.** Borrower shall admit in writing its inability to pay its debts generally as they become due, make an assignment for the benefit of creditors, file a petition in bankruptcy, be adjudicated insolvent or bankrupt, petition or apply to any tribunal for the appointment of any receiver or trustee thereof or of any substantial part of its property or commence any proceedings under any arrangement, readjustment of debt, or statute of any jurisdiction, whether now or hereafter in effect; or there is commenced against Borrower any such proceeding which remains undismissed for a period of thirty (30) calendar days; or
- H. Receivership.** Borrower by any act indicates its consent to, approval of or acquiescence in any such proceeding or in the appointment of any receiver or of any trustee for Borrower with respect to a substantial part of its property; or
- I. Inability to Pay Judgment.** If any final judgment for the payment of money that is not fully covered by liability insurance and is in excess of \$10,000.00 shall be rendered against the Borrower concerning a claim filed with respect to the Property and not discharged within thirty (30) calendar days from the date of final disposition thereof including the exhaustion of all appellate rights; or
- J. Non-compliance with Loan Documents.** If Borrower defaults, breaches, or commits an event of default that is uncured pursuant to any other Loan Document; or
- K. Insurance not Maintained.** If Borrower does not keep in full force and effect or any agreement with a contractor of Borrower constructing Improvements or installing Personality does not require such contractor to keep in full force and effect any insurance coverages required by the Insurance Requirement of this Loan Agreement.

Section 18 REMEDIES IN THE EVENT OF DEFAULT. Upon the occurrences of any Event of Default as stated in Section 17 of this Loan Agreement AHFC may at any time, and without further notice take any or all of the following action:

- A.** If Borrower fails to cure such Event of Default within the time period provided by subsection 21.B. of this Loan Agreement:
1. demand repayment of the Note, and Borrower shall remit such amount to AHFC within ten (10) calendar days thereof;
 2. cancel, suspend or terminate payment of any funds due Borrower under this Loan Agreement;
 3. cancel, suspend or terminate this Loan Agreement in whole or part;
 4. exercise control over the collateral pursuant to the Deed of Trust; and
 5. pursue such other measures as may be lawful, including suing for specific performance, for the recovery of damages and for the release or return of all or part of the funds committed herein.
- B.** If the Event of Default is material, in addition to the remedies described in subsection 18.A. and any and all other rights, remedies and recourses available to it under any of the Loan Documents or otherwise available at law or in equity:
1. suspend payment of any funds due the Borrower under this Loan Agreement; and

2. suspend the right of the Borrower to incur any additional obligations under this Loan Agreement in whole or part; or
 3. suspend the right of the Borrower to continue any performance under this Loan Agreement in whole or part.
- C. If the AHFC elects to foreclose its lien securing performance of this Loan Agreement, such foreclosure shall not diminish or extinguish the obligation of Borrower to pay Liquidated Damages under this Loan Agreement. The parties specifically agree that payment of Liquidated Damages and foreclosure of the AHFC's liens are two separate and distinct remedies.

Section 19 HOLD HARMLESS AND INDEMNITY.

- A. **Injuries or Damages.** Borrower shall perform all duties hereunder as an independent contractor and any of its employees performing work required by this Loan Agreement shall be deemed solely employees of Borrower or its subcontractor. Borrower shall save and hold harmless AHFC, its officers, agents, and employees from any and all liability of any nature or kind on account of any claims, audit exceptions, demands, suits, or damages including reasonable attorneys' fees and court costs arising or resulting from injuries or damages sustained by any persons or property resulting in whole or in part from the performance or omissions of any employee, agent, or representative of Borrower.
- B. **Any and All Liability.** Borrower undertakes to indemnify and hold harmless AHFC, its board, officers, agents and employees from any and all liability, loss or damages AHFC may suffer as a result of claims, demands, costs, or judgments against it arising out of the performance of the terms of this Loan Agreement, provided that for so long as the Project and Property is subject to a loan held or insured by HUD, any Borrower indemnity obligations shall be limited to Surplus Cash, as such term is defined in the Regulatory Agreement for Multifamily Projects by and between the Borrower and HUD. It is agreed that any indemnity obligations herein or in any other document executed in connection herewith are personal to Borrower or any other party entering an indemnification agreement with Lender. In the event that HUD becomes a successor in interest to the Borrower, none of the indemnity obligations shall apply to, or be binding on, HUD.

Section 20 WAIVER OF NOTICE. The Borrower hereby expressly waives any requirement for presentation, demand, protest, notice of protest or other notice or dishonor of any kind, other than the notice specifically provided for in this Loan Agreement.

Section 21 NOTICES.

- A. All notices, demands and communications provided for herein or made hereunder shall be delivered, or sent by certified mail, return receipt requested, addressed in each case as follows, until some other address shall have been designated in a written notice to the other party hereto given in like manner:

If intended for Borrower:

JESE Real Estate, LLC

Attn: Russell Artman
7606 Bellflower CV
Austin, TX 78759

If intended for AHFC:

Austin Housing Finance Corporation
Attn: Ownership Housing Development Program
1000 East Eleventh Street, #200
Austin, Texas 78702

and shall be deemed to have been given or made when so delivered or mailed, except as herein otherwise expressly provided. Notification of a change of address shall be delivered to AHFC and Borrower within ten (10) calendar days of such change of address.

- B. Notwithstanding anything herein contained in this Loan Agreement, the Note or the Loan Documents securing same to the contrary, it is agreed that AHFC shall not declare any amounts owing in the Note immediately due and payable if default is made in the payment of any installment of principal or interest thereon, as and when the same is or becomes due, unless any such default has not been fully cured within ten (10) calendar days after notice of such default shall have been given to Borrower. Further, notwithstanding anything herein to the contrary, it is agreed that the AHFC shall not declare any amounts owing on the Note immediately due and payable in the event of a default or breach by Borrower of any of the covenants or obligations herein contained or contained in any instrument securing the payment of the Note or executed in connection herewith other than the covenant to timely pay installments of principal and interest on the Note, unless any such default has not been fully cured within thirty (30) calendar days after notice of such default or breach shall have been given to Borrower; provided, however, if Borrower commences the process of curing such default and notifies AHFC of such action within such thirty day period, or within any subsequent thirty day period, and proceeds diligently and continuously toward fully curing such default, Borrower shall have an additional period, in increments of thirty (30) calendar days each, up to ninety (90) calendar days to fully cure such default. Any such notice shall be given in writing and shall be deemed to be given three (3) calendar days after the date such notice is deposited, postage prepaid, via certified mail, return receipt requested, in the U.S. mail addressed to Borrower at the address set forth in subsection 21.A. of this Loan Agreement.

Section 22 SURVIVAL OF REPRESENTATIONS COVENANTS AND WARRANTIES. All representations, covenants and warranties contained herein shall survive the execution and delivery of the Loan Documents, any investigation at any time made by the AHFC or on its behalf, and any sale or transfer of the Loan Documents.

Section 23 ENTIRE AGREEMENT, CONSTRUCTION AND AMENDMENT. The Loan Documents constitute the entire agreement between the parties pertaining to the subject matter hereof and supersede all prior and contemporaneous agreements and understandings of the parties in connection therewith. These Loan Documents may not be changed, amended or terminated orally but only by agreement in writing and signed by the party against whom enforcement of any change, amendment or termination is sought. Provided the amendment does not increase the Loan amount, the City

Manager or the City Manager's designee is authorized to execute any amendment to the Loan Documents without further authorization by the AHFC Board of Directors.

Section 24 FORCE MAJEURE.

A. The failure of a party to perform its obligations hereunder shall be excused to the extent, and for the period of time, such failure is caused by the occurrence of an event of Force Majeure. Force Majeure shall mean acts and events not within the control of the party claiming suspension, and which that party has been unable by the exercise of due diligence to avoid or prevent. Events of Force Majeure include, without limitation: Acts of God; strikes, lockouts or other industrial disputes; inability to obtain material, equipment or labor; epidemics, civil disturbances, acts of domestic or foreign terrorism, wars, riots or insurrections; landslides, lightning, earthquakes, fires, storms, floods or washouts; arrests and restraint of rulers and people; interruptions by government or court orders; present or future orders of any regulatory body having proper jurisdiction and authority; explosions; and breakage or accident to machinery. Force Majeure does not include economic or market conditions which affect a party's cost, but not its ability, to perform.

B. Nothing contained herein shall be construed to require a party to settle a strike or other labor dispute against its will.

C. The party invoking Force Majeure shall give prompt, timely and adequate notice to the other party, by facsimile transmission, email or telephone confirmed promptly thereafter in the manner and at the address set forth in subsection 21.A. of this Loan Agreement, and shall use due diligence to remedy the event of Force Majeure, as soon as reasonably possible.

Section 25 PAYMENT. The Borrower will pay to AHFC at its notice address specified in subsection 21.A. of this Loan Agreement, or at such other address as it may designate in writing, all amounts payable with respect to the Loan Documents.

Section 26 LEGAL COUNSEL. The parties are each represented by legal counsel and have negotiated the Loan Documents with benefit of such counsel.

Section 27 SUCCESSOR AND ASSIGNS. All covenants, agreements, representations and warranties made in the Loan Documents or in certificates delivered in connection herewith shall, whether so expressed or not, bind and inure to the benefit of the successors and permitted assigns of the Borrower and AHFC.

Section 28 COUNTERPARTS. These Loan Documents may be executed in multiple originals.

Section 29 SEVERABILITY. In the event that any provisions of the Loan Documents or any other instrument executed at closing or the application thereof to any person or circumstances shall be declared to be invalid, illegal, or unenforceable by a court of competent jurisdiction, the remainder of such provisions and agreements shall nevertheless remain in full force and effect; and to this end, the provisions of all covenants, conditions and agreements described herein are deemed severable for this purpose.

Section 30 NO WAIVER; REMEDIES CUMULATIVE. No exercise, partial exercise, failure, forbearance or delay on the part of the AHFC in exercising any power or right under the Loan Documents shall operate as a waiver of the power or right, except as specifically provided herein. No remedy conferred

in the Loan Documents is intended to be exclusive of any other remedy, and each and every other remedy given hereunder or now or hereafter existing at law or in equity by statute or otherwise, may be sought by the enforcing party.

Section 31 EXECUTION BY ADDITIONAL PARTIES. When any Signatory Party joins in the execution of any of the Loan Documents, said party has done so for the purpose of consenting to all of the terms and conditions in such instrument and agrees by such execution to be bound hereby.

Section 32 SURVIVAL OF OBLIGATIONS. All obligations of Borrower under the Loan Documents, which have not been fully performed, paid and satisfied at the termination of this Loan Agreement, shall survive the termination.

Section 33 ALTERNATIVE DISPUTE RESOLUTION. Initiation of any alternative dispute resolution under this Section 33 shall not relieve either party of its obligations under the Loan Documents regarding matters not disputed. Any agreement reached under this Section 33 shall be enforceable as a settlement agreement in any court having jurisdiction thereof.

A. If a dispute arises out of or relates to the Loan Documents, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this Section 33 does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after the initial written request for a meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to Mediation as described in subsection 33.B. Negotiation as described in this subsection 33.A may be waived by a written agreement signed by both parties, in which event the parties shall proceed directly to Mediation as described in subsection 33.B.


B. If the procedure to resolve the dispute through negotiation as described in subsection 33.A. fails or is waived in accordance with subsection 33.A, the parties agree to participate in Mediation in good faith for up to forty-five (45) calendar days immediately following the failure or waiver. The parties agree to pay the fees and expenses of the Mediation equally. In the event either party fails to reach resolution of the dispute through Mediation, then each party is released to pursue any other remedies available to each party.

Section 34 GOVERNING LAW. The Loan Documents shall be governed by and interpreted in accordance with the laws of the State of Texas. Although drafted by the AHFC, the Loan Documents shall be fairly construed, neither more strongly for nor against any party.

Section 35 PERFORMANCE VENUE. The Loan Documents shall be performed in Travis County, Texas. Venue shall be in Travis County, Texas.

EXECUTED AND DELIVERED effective as of the date first above written.

Borrower: **JESE REAL ESTATE, LLC**

By: 
NAME: Russell Artman
TITLE: Director

5/7/19
Date Signed

AHFC: AUSTIN HOUSING FINANCE CORPORATION

By: 
Name: Rosie Truelove
TITLE: Treasurer

4/26/19
Date Signed

Attached Exhibits:

EXHIBIT A - Definitions

EXHIBIT B - Statement of Work and Budget (plus attachments)

EXHIBIT C- Declaration of Restrictive Covenant Regarding Affordable Housing Requirements

EXHIBIT D - Insurance Requirements

PREPARED IN THE LAW OFFICE OF:

City of Austin

Law Department

FILED AND RECORDED
OFFICIAL PUBLIC RECORDS



Dana DeBeauvoir

Dana DeBeauvoir, County Clerk
Travis County, Texas

May 08, 2019 04:23 PM Fee: \$58.00

2019066442

Electronically Recorded

50 OCT 19 - 415043 AM

NOTICE OF CONFIDENTIALITY

RIGHTS: If you are a natural person, you may remove or strike any or all of the following information from any instrument that transfers an interest in real property before it is filed for record in the Public Records: Your Social Security number or your driver's license number.

DEED OF TRUST
AND
SECURITY AGREEMENT AND FINANCING STATEMENT

Effective Date: May 7, 2019

Grantor: JESE REAL ESTATE, LLC, a Texas limited liability company

Grantor's Mailing Address: 7606 Bellflower CV
Austin, TX 78759

Trustee: ROSIE TRUELOVE

Trustee's Mailing Address: Austin Housing Finance Corporation
Attn.: OHDA Program
1000 East Eleventh Street - Suite 200
Austin, Travis County, Texas 78702

Lender: AUSTIN HOUSING FINANCE CORPORATION, a Texas public, non-profit corporation

Lender's Mailing Address: Attn: OHDA Program
1000 East Eleventh Street - Suite 200
Austin, Travis County, Texas 78702

Note:

Date: May 7, 2019

Agreement: Development Program Loan Agreement

Loan amount: US \$ 538,355

Borrower: JESE REAL ESTATE, LLC, a Texas limited liability company

Lender: AUSTIN HOUSING FINANCE CORPORATION, a Texas public, nonprofit corporation

Property (including any improvements):

The certain real property more particularly described on Exhibit "A" attached to this Deed of Trust and Security Agreement and Financing Statement ("Deed of Trust") and by this reference incorporated in it, and all rights, titles and interests appurtenant thereto. The Property is generally located at: 300 East Croslin Street, Austin, Travis County, Texas 78752.

Prior Liens: None.

Other Exceptions to Conveyance and Warranty:

Liens described as part of the consideration and any other liens described in this deed as being either assumed or subject to which title is taken; validly existing easements, rights-of-way, and prescriptive rights, whether of record or not; all presently recorded and validly existing instruments, other than conveyances of the surface fee estate, that affect the Property; and taxes for 2019, which Lender assumes and agrees to pay, but not subsequent assessments for that and prior years due to change in land usage, ownership, or both, the payment of which Grantor assumes.

For value received and to secure payment of the Note and performance of the Obligations, Grantor conveys the Property to Trustee in trust. Grantor warrants and agrees to defend the title to the Property, subject to the Other Exceptions to Conveyance and Warranty. On payment of the Note and all other amounts secured by this Deed of Trust, including without limitation the Indebtedness described in the Obligation and performance of all other non-monetary obligations of Grantor under the Note and the Obligation, this Deed of Trust will have no further effect, and Lender will release it at Grantor's expense.

Clauses and Covenants

Section 1 GRANTOR'S OBLIGATIONS

Grantor agrees to:

- 1.1 keep the Property in good repair and condition;
- 1.2 pay all taxes and assessments on the Property before delinquency;
- 1.3 defend title to the Property subject to the Other Exceptions to Conveyance and Warranty and preserve the lien's priority as it is established by this Deed of Trust;
- 1.4 maintain, in a form acceptable to Lender, all insurance coverages with respect to the Property, revenues generated by the Property, and operations on the Property that Lender reasonably requires under the Insurance Requirements stated in the Loan Agreement ("Insurance Requirements"), issued by insurers and written on policy forms acceptable to Lender at least thirty calendar days before the expiration of existing coverage;

- 1.5 obey all laws, ordinances, and restrictive covenants applicable to the Property;
- 1.6 keep any buildings occupied as required by the Insurance Requirements;
- 1.7 if the lien of this Deed of Trust is not a first lien, pay or cause to be paid all prior lien notes and abide by or cause to be abided by all prior lien instruments;
- 1.8 notify Lender of any change of address; and
- 1.9 comply at all times with the requirements, covenants, terms and conditions of the Loan Agreement and Note.

Section 2 LENDER'S RIGHTS

- 2.1 Lender may appoint in writing a substitute trustee, succeeding to all rights and responsibilities of Trustee.
- 2.2 If the proceeds of the Note are used to pay any debt secured by prior liens, Lender is subrogated to all the rights and liens of the holders of any debt so paid.
- 2.3 Lender may apply any proceeds received under the property insurance policies covering the Property either to reduce the Note or to repair or replace damaged or destroyed improvements covered by the policy.
- 2.4 Notwithstanding the terms of the Note to the contrary, and unless applicable law prohibits, all payments received by Lender from Grantor under the Note, the Loan Agreement or this Deed of Trust may, at Lender's discretion, be applied first to amounts payable under this Deed of Trust and then to amounts due and payable to Lender under the Note or with respect to the Loan Agreement, to be applied to late charges, principal, or interest in the order Lender in its discretion determines.
- 2.5 If Grantor fails to perform any of Obligations, Lender may perform those Obligations and be reimbursed by Grantor on demand for any amounts so paid, including attorney's fees, plus interest on those amounts from the dates of payment at the rate stated in the Note for Matured, Unpaid amounts. The amount to be reimbursed will be secured by this Deed of Trust.
- 2.6 If there is a default on the Note or the Loan Agreement or if Grantor fails to perform any of the Obligations under the Loan Agreement and the default continues after any required notice of the default and the time allowed to cure, Lender may:
 - 2.6.1 declare the unpaid principal balance and earned interest on the Note immediately due and/or declare the non-monetary obligations under the Note and/or the Loan Agreement not performed or not performable;
 - 2.6.2 direct Trustee to foreclose this lien, in which case Lender or Lender's agent will cause notice of the foreclosure sale to be given as provided by the Texas Property Code as then in effect; and
 - 2.6.3 purchase the Property at any foreclosure sale by offering the highest bid and then have the bid credited on the Note.
- 2.7 Lender may remedy any default without waiving it and may waive any default without waiving any prior or subsequent default.

Section 3 TRUSTEE'S RIGHTS AND DUTIES

If directed by Lender to foreclose this lien, Trustee will:

- 3.1 either personally or by agent give notice of the foreclosure sale as required by the Texas Property Code as then in effect;
- 3.2 sell and convey all or part of the Property "AS IS" to the highest bidder for cash with a general warranty binding Grantor, subject to the Prior Lien and to the Other Exceptions to Conveyance and Warranty and without representation or warranty, express or implied, by Trustee;
- 3.3 from the proceeds of the sale, pay, in this order:
 - 3.3.1 expenses of foreclosure, including a reasonable commission to Trustee;
 - 3.3.2 to Lender, the full amount of principal, interest, attorney's fees, and other charges due and unpaid;
 - 3.3.3 any amounts required by law to be paid before payment to Grantor; and
 - 3.3.4 to Grantor, any balance.

Section 4 GENERAL PROVISIONS

- 4.1 If any of the Property is sold under this Deed of Trust, Grantor must immediately surrender possession to the purchaser. If Grantor fails to do so, Grantor will become a tenant at sufferance of the purchaser, subject to an action for forcible detainer.
- 4.2 Recitals in any trustee's deed conveying the Property will be presumed to be true.
- 4.3 Proceeding under this Deed of Trust, filing suit for foreclosure, or pursuing any other remedy will not constitute an election of remedies.
- 4.4 This lien will remain superior to liens later created even if the time of payment of all or part of the Note is extended or part of the Property is released.
- 4.5 If any portion of the Note cannot be lawfully secured by this Deed of Trust, payments will be applied first to discharge that portion.
- 4.6 Grantor assigns to Lender all amounts payable to or received by Grantor from condemnation of all or part of the Property, from private sale in lieu of condemnation, and from damages caused by public works or construction on or near the Property. After deducting any expenses incurred, including attorney's fees and court and other costs, Lender will either release any remaining amounts to Grantor or apply such amounts to reduce the Note. Lender will not be liable for failure to collect or to exercise diligence in collecting any such amounts. Grantor will immediately give Lender notice of any actual or threatened proceedings for condemnation of all or part of the Property.
- 4.7 Grantor assigns to Lender absolutely, not only as collateral, all present and future rent and other income and receipts from the Property. Grantor warrants the validity and

enforceability of the assignment. Lender may exercise Lender's rights and remedies under this paragraph without taking possession of the Property. Lender will apply all rent and other income and receipts collected under this paragraph first to expenses incurred in exercising Lender's rights and remedies and then to Grantor's obligations under the Note, with respect to performing the Loan Agreement and this Deed of Trust in the order determined by Lender. Lender is not required to act under this paragraph, and acting under this paragraph does not waive any of Lender's other rights or remedies. If Grantor becomes a voluntary or involuntary debtor in bankruptcy, Lender's filing a proof of claim in bankruptcy will be deemed equivalent to the appointment of a receiver under Texas law.

- 4.8 This Deed of Trust also secures payment of any debt that Grantor may subsequently owe to Lender; when it accrues, any such future debt will bear interest at the rates provided in the Note, and in all respects will be deemed a part of the debt secured by this Deed of Trust.
- 4.9 As provided for in the Loan Agreement, the Loan to Borrower was made for the express purpose of: (a) rehabilitating sixteen (16) apartments on the Property; (b) converting the same to condominiums; (c) constructing an additional condominium unit on the Property; (d) selling seventeen (17) of the resulting condominiums as affordable housing; and (e) selling four (4) additional condominiums without affordable housing restrictions. The transfer of the seventeen (17) condominiums will require serial, partial releases of the Property from the Note and this Deed of Trust.
- 4.10 Provided (a) there exists no event of default under the Note, the Loan Agreement or this Deed of Trust, (b) no event has occurred that, with notice, passage of time, or both, will become an event of default; (c) the Declaration of Restrictive Covenant Regarding Affordable Housing Requirements (the "Covenant") defined in the Loan Agreement has been duly executed and filed of record; (d) the unit or condominium being transferred by Grantor is to an *Eligible Household* as that term is defined in the Loan Agreement; and (e) the Buyer/Grantee of the condominium has executed a Resale Restriction Agreement and Covenant Limitations on Resale Price and Buyer Income in accordance with the Covenant, Grantor may have released from all liens securing the Note and this Deed of Trust one or more units or condominiums out of the Property by paying to Lender the release price per condominium/unit as follows:
- 4.10.1 The release price per condominium/unit will be \$1.
- 4.10.2 The release price paid by Grantor will be applied by Lender as a prepayment on the Note. All payments for partial releases will be applied as a prepayment on the Note.
- 4.10.3 At the time a partial release is requested, the party requesting the release must furnish to Lender a plat of survey, or other suitable legal description of the property to be released indicating the unit/condominium to be released and its relationship to the portion of the Property not to be released. All expenses incident to the granting of partial releases will be borne by the party requesting the release, including but not limited to the cost of the survey and/or other legal description, Lender's attorney's fees, and recording costs.

- 4.11 Regarding the four (4) units or condominiums from the Property not subject to the affordable housing requirements, the conditions in subsections 4.10(c) through (e) shall not be applicable to the partial release, but the partial release shall otherwise be subject the terms, conditions and requirements of subsection 4.10
- 4.12 Interest on the debt secured by this Deed of Trust will not exceed the maximum amount of nonusurious interest that may be contracted for, taken, reserved, charged, or received under law. Any interest in excess of that maximum amount will be credited on the principal of the debt or, if that has been paid, refunded. On any acceleration or required or permitted prepayment, any such excess will be canceled automatically as of the acceleration or prepayment or, if already paid, credited on the principal of the debt or, if the principal of the debt has been paid, refunded. This provision overrides any conflicting provisions in this and all other instruments concerning the debt.
- 4.13 In no event may this Deed of Trust secure payment of any debt that may not lawfully be secured by a lien on real estate or create a lien otherwise prohibited by law.
- 4.14 If the Property is transferred by foreclosure, the transferee will acquire title to all insurance policies on the Property, including all paid but unearned premiums.
- 4.15 Grantor agrees to furnish on Lender's request evidence satisfactory to Lender that all taxes and assessments on the Property have been paid when due.
- 4.16 Grantor agrees to allow Lender or Lender's agents to enter the Property at reasonable times and inspect it and any personal property on which Lender is granted a security interest by this Deed of Trust, pursuant to Section 15.S. of the Loan Agreement.
- 4.17 When the context requires, singular nouns and pronouns include the plural.
- 4.18 The term *Note* includes all extensions and renewals of the Note and all amounts secured by this Deed of Trust.
- 4.19 The term *Lender* includes any mortgage servicer for Lender.
- 4.20 This Deed of Trust binds, benefits, and may be enforced by the successors in interest of all parties.
- 4.21 If Grantor and Borrower are not the same person, the term *Grantor* includes Borrower.
- 4.22 Grantor and each surety, endorser, and guarantor of the Note waive all demand for payment, presentation for payment, notice of intention to accelerate maturity, notice of acceleration of maturity, protest, and notice of protest, to the extent permitted by law.
- 4.23 Grantor agrees to pay reasonable attorney's fees, trustee's fees, and court and other costs of enforcing Lender's rights under this Deed of Trust if this Deed of Trust is placed in the hands of an attorney for enforcement.
- 4.24 If any provision of this Deed of Trust is determined to be invalid or unenforceable, the validity or enforceability of any other provision will not be affected.

- 4.25 Grantor represents that this Deed of Trust and the Note are given for the purpose of securing Housing Trust Funds provided for rehabilitation and construction costs associated with the Project pursuant to the Loan Agreement.

[Signature Page Follows]

Borrower: JESE REAL ESTATE, LLC

By: [Signature]
Name: Russell Artman
Title: Manager

ATTACHED: EXHIBIT A - Legal Description of Property

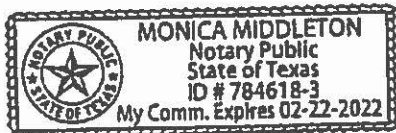
(Acknowledgment)

STATE OF TEXAS

§
§
§

COUNTY OF TRAVIS

This instrument was acknowledged before me on May 7 2019 2019, by
Russell Artman, Manager of JESE Real Estate, LLC,
a Texas limited liability company, on behalf of the company.



[Signature]
Notary Public, State of Texas

RECORD AND RETURN TO:

Austin Housing Finance Corporation
Attn: OHDA Program Manager
1000 East Eleventh Street - Suite 200
Austin, Texas 78702

PREPARED BY:
City of Austin
Law Department

EXHIBIT A

Legal Description of the Property

The legal description of the Property referred to in this instrument is described as follows:

Lot A, HAMPTON PLACE, according to the map or plat thereof, recorded in Volume 47, Page 29, Plat Records, Travis County, Texas.

50 CTOT 19-415043 AM

NOTICE OF CONFIDENTIALITY RIGHTS: If you are a natural person, you may remove or strike any or all of the following information from any instrument that transfers an interest in real property before it is filed for record in the Public Records: Your Social Security number or your driver's license number.

**DEED OF TRUST
AND
SECURITY AGREEMENT AND FINANCING STATEMENT**

Effective Date: May 7, 2019

Grantor: JESE REAL ESTATE, LLC, a Texas limited liability company

Grantor's Mailing Address: 7606 Bellflower CV
Austin, TX 78759

Trustee: ROSIE TRUELOVE

Trustee's Mailing Address: Austin Housing Finance Corporation
Attn.: OHDA Program
1000 East Eleventh Street - Suite 200
Austin, Travis County, Texas 78702

Lender: AUSTIN HOUSING FINANCE CORPORATION, a Texas public, non-profit corporation

Lender's Mailing Address: Attn: OHDA Program
1000 East Eleventh Street - Suite 200
Austin, Travis County, Texas 78702

Note:
Date: May 7, 2019
Agreement: Development Program Loan Agreement
Loan amount: US \$ 538,355
Borrower: JESE REAL ESTATE, LLC, a Texas limited liability company

Lender: AUSTIN HOUSING FINANCE CORPORATION, a Texas public, nonprofit corporation

Property (including any improvements):

The certain real property more particularly described on Exhibit "A" attached to this Deed of Trust and Security Agreement and Financing Statement ("Deed of Trust") and by this reference incorporated in it, and all rights, titles and interests appurtenant thereto. The Property is generally located at: 300 East Croslin Street, Austin, Travis County, Texas 78752.

Prior Liens: None.

Other Exceptions to Conveyance and Warranty:

Liens described as part of the consideration and any other liens described in this deed as being either assumed or subject to which title is taken; validly existing easements, rights-of-way, and prescriptive rights, whether of record or not; all presently recorded and validly existing instruments, other than conveyances of the surface fee estate, that affect the Property; and taxes for 2019, which Lender assumes and agrees to pay, but not subsequent assessments for that and prior years due to change in land usage, ownership, or both, the payment of which Grantor assumes.

For value received and to secure payment of the Note and performance of the Obligations, Grantor conveys the Property to Trustee in trust. Grantor warrants and agrees to defend the title to the Property, subject to the Other Exceptions to Conveyance and Warranty. On payment of the Note and all other amounts secured by this Deed of Trust, including without limitation the Indebtedness described in the Obligation and performance of all other non-monetary obligations of Grantor under the Note and the Obligation, this Deed of Trust will have no further effect, and Lender will release it at Grantor's expense.

Clauses and Covenants

Section 1 GRANTOR'S OBLIGATIONS

Grantor agrees to:

- 1.1 keep the Property in good repair and condition;
- 1.2 pay all taxes and assessments on the Property before delinquency;
- 1.3 defend title to the Property subject to the Other Exceptions to Conveyance and Warranty and preserve the lien's priority as it is established by this Deed of Trust;
- 1.4 maintain, in a form acceptable to Lender, all insurance coverages with respect to the Property, revenues generated by the Property, and operations on the Property that Lender reasonably requires under the Insurance Requirements stated in the Loan Agreement ("Insurance Requirements"), issued by insurers and written on policy forms acceptable to Lender at least thirty calendar days before the expiration of existing coverage;

- 1.5 obey all laws, ordinances, and restrictive covenants applicable to the Property;
- 1.6 keep any buildings occupied as required by the Insurance Requirements;
- 1.7 if the lien of this Deed of Trust is not a first lien, pay or cause to be paid all prior lien notes and abide by or cause to be abided by all prior lien instruments;
- 1.8 notify Lender of any change of address; and
- 1.9 comply at all times with the requirements, covenants, terms and conditions of the Loan Agreement and Note.

Section 2 LENDER'S RIGHTS

- 2.1 Lender may appoint in writing a substitute trustee, succeeding to all rights and responsibilities of Trustee.
- 2.2 If the proceeds of the Note are used to pay any debt secured by prior liens, Lender is subrogated to all the rights and liens of the holders of any debt so paid.
- 2.3 Lender may apply any proceeds received under the property insurance policies covering the Property either to reduce the Note or to repair or replace damaged or destroyed improvements covered by the policy.
- 2.4 Notwithstanding the terms of the Note to the contrary, and unless applicable law prohibits, all payments received by Lender from Grantor under the Note, the Loan Agreement or this Deed of Trust may, at Lender's discretion, be applied first to amounts payable under this Deed of Trust and then to amounts due and payable to Lender under the Note or with respect to the Loan Agreement, to be applied to late charges, principal, or interest in the order Lender in its discretion determines.
- 2.5 If Grantor fails to perform any of Obligations, Lender may perform those Obligations and be reimbursed by Grantor on demand for any amounts so paid, including attorney's fees, plus interest on those amounts from the dates of payment at the rate stated in the Note for Matured, Unpaid amounts. The amount to be reimbursed will be secured by this Deed of Trust.
- 2.6 If there is a default on the Note or the Loan Agreement or if Grantor fails to perform any of the Obligations under the Loan Agreement and the default continues after any required notice of the default and the time allowed to cure, Lender may:
 - 2.6.1 declare the unpaid principal balance and earned interest on the Note immediately due and/or declare the non-monetary obligations under the Note and/or the Loan Agreement not performed or not performable;
 - 2.6.2 direct Trustee to foreclose this lien, in which case Lender or Lender's agent will cause notice of the foreclosure sale to be given as provided by the Texas Property Code as then in effect; and
 - 2.6.3 purchase the Property at any foreclosure sale by offering the highest bid and then have the bid credited on the Note.
- 2.7 Lender may remedy any default without waiving it and may waive any default without waiving any prior or subsequent default.

Section 3 TRUSTEE'S RIGHTS AND DUTIES

If directed by Lender to foreclose this lien, Trustee will:

- 3.1 either personally or by agent give notice of the foreclosure sale as required by the Texas Property Code as then in effect;
- 3.2 sell and convey all or part of the Property "AS IS" to the highest bidder for cash with a general warranty binding Grantor, subject to the Prior Lien and to the Other Exceptions to Conveyance and Warranty and without representation or warranty, express or implied, by Trustee;
- 3.3 from the proceeds of the sale, pay, in this order:
 - 3.3.1 expenses of foreclosure, including a reasonable commission to Trustee;
 - 3.3.2 to Lender, the full amount of principal, interest, attorney's fees, and other charges due and unpaid;
 - 3.3.3 any amounts required by law to be paid before payment to Grantor; and
 - 3.3.4 to Grantor, any balance.

Section 4 GENERAL PROVISIONS

- 4.1 If any of the Property is sold under this Deed of Trust, Grantor must immediately surrender possession to the purchaser. If Grantor fails to do so, Grantor will become a tenant at sufferance of the purchaser, subject to an action for forcible detainer.
- 4.2 Recitals in any trustee's deed conveying the Property will be presumed to be true.
- 4.3 Proceeding under this Deed of Trust, filing suit for foreclosure, or pursuing any other remedy will not constitute an election of remedies.
- 4.4 This lien will remain superior to liens later created even if the time of payment of all or part of the Note is extended or part of the Property is released.
- 4.5 If any portion of the Note cannot be lawfully secured by this Deed of Trust, payments will be applied first to discharge that portion.
- 4.6 Grantor assigns to Lender all amounts payable to or received by Grantor from condemnation of all or part of the Property, from private sale in lieu of condemnation, and from damages caused by public works or construction on or near the Property. After deducting any expenses incurred, including attorney's fees and court and other costs, Lender will either release any remaining amounts to Grantor or apply such amounts to reduce the Note. Lender will not be liable for failure to collect or to exercise diligence in collecting any such amounts. Grantor will immediately give Lender notice of any actual or threatened proceedings for condemnation of all or part of the Property.
- 4.7 Grantor assigns to Lender absolutely, not only as collateral, all present and future rent and other income and receipts from the Property. Grantor warrants the validity and

enforceability of the assignment. Lender may exercise Lender's rights and remedies under this paragraph without taking possession of the Property. Lender will apply all rent and other income and receipts collected under this paragraph first to expenses incurred in exercising Lender's rights and remedies and then to Grantor's obligations under the Note, with respect to performing the Loan Agreement and this Deed of Trust in the order determined by Lender. Lender is not required to act under this paragraph, and acting under this paragraph does not waive any of Lender's other rights or remedies. If Grantor becomes a voluntary or involuntary debtor in bankruptcy, Lender's filing a proof of claim in bankruptcy will be deemed equivalent to the appointment of a receiver under Texas law.

- 4.8 This Deed of Trust also secures payment of any debt that Grantor may subsequently owe to Lender; when it accrues, any such future debt will bear interest at the rates provided in the Note, and in all respects will be deemed a part of the debt secured by this Deed of Trust.
- 4.9 As provided for in the Loan Agreement, the Loan to Borrower was made for the express purpose of: (a) rehabilitating sixteen (16) apartments on the Property; (b) converting the same to condominiums; (c) constructing an additional condominium unit on the Property; (d) selling seventeen (17) of the resulting condominiums as affordable housing; and (e) selling four (4) additional condominiums without affordable housing restrictions. The transfer of the seventeen (17) condominiums will require serial, partial releases of the Property from the Note and this Deed of Trust.
- 4.10 Provided (a) there exists no event of default under the Note, the Loan Agreement or this Deed of Trust, (b) no event has occurred that, with notice, passage of time, or both, will become an event of default; (c) the Declaration of Restrictive Covenant Regarding Affordable Housing Requirements (the "Covenant") defined in the Loan Agreement has been duly executed and filed of record; (d) the unit or condominium being transferred by Grantor is to an *Eligible Household* as that term is defined in the Loan Agreement; and (e) the Buyer/Grantee of the condominium has executed a Resale Restriction Agreement and Covenant Limitations on Resale Price and Buyer Income in accordance with the Covenant, Grantor may have released from all liens securing the Note and this Deed of Trust one or more units or condominiums out of the Property by paying to Lender the release price per condominium/unit as follows:
- 4.10.1 The release price per condominium/unit will be \$1.
- 4.10.2 The release price paid by Grantor will be applied by Lender as a prepayment on the Note. All payments for partial releases will be applied as a prepayment on the Note.
- 4.10.3 At the time a partial release is requested, the party requesting the release must furnish to Lender a plat of survey, or other suitable legal description of the property to be released indicating the unit/condominium to be released and its relationship to the portion of the Property not to be released. All expenses incident to the granting of partial releases will be borne by the party requesting the release, including but not limited to the cost of the survey and/or other legal description, Lender's attorney's fees, and recording costs.

- 4.11 Regarding the four (4) units or condominiums from the Property not subject to the affordable housing requirements, the conditions in subsections 4.10(c) through (e) shall not be applicable to the partial release, but the partial release shall otherwise be subject the terms, conditions and requirements of subsection 4.10
- 4.12 Interest on the debt secured by this Deed of Trust will not exceed the maximum amount of nonusurious interest that may be contracted for, taken, reserved, charged, or received under law. Any interest in excess of that maximum amount will be credited on the principal of the debt or, if that has been paid, refunded. On any acceleration or required or permitted prepayment, any such excess will be canceled automatically as of the acceleration or prepayment or, if already paid, credited on the principal of the debt or, if the principal of the debt has been paid, refunded. This provision overrides any conflicting provisions in this and all other instruments concerning the debt.
- 4.13 In no event may this Deed of Trust secure payment of any debt that may not lawfully be secured by a lien on real estate or create a lien otherwise prohibited by law.
- 4.14 If the Property is transferred by foreclosure, the transferee will acquire title to all insurance policies on the Property, including all paid but unearned premiums.
- 4.15 Grantor agrees to furnish on Lender's request evidence satisfactory to Lender that all taxes and assessments on the Property have been paid when due.
- 4.16 Grantor agrees to allow Lender or Lender's agents to enter the Property at reasonable times and inspect it and any personal property on which Lender is granted a security interest by this Deed of Trust, pursuant to Section 15.S. of the Loan Agreement.
- 4.17 When the context requires, singular nouns and pronouns include the plural.
- 4.18 The term *Note* includes all extensions and renewals of the Note and all amounts secured by this Deed of Trust.
- 4.19 The term *Lender* includes any mortgage servicer for Lender.
- 4.20 This Deed of Trust binds, benefits, and may be enforced by the successors in interest of all parties.
- 4.21 If Grantor and Borrower are not the same person, the term *Grantor* includes Borrower.
- 4.22 Grantor and each surety, endorser, and guarantor of the Note waive all demand for payment, presentation for payment, notice of intention to accelerate maturity, notice of acceleration of maturity, protest, and notice of protest, to the extent permitted by law.
- 4.23 Grantor agrees to pay reasonable attorney's fees, trustee's fees, and court and other costs of enforcing Lender's rights under this Deed of Trust if this Deed of Trust is placed in the hands of an attorney for enforcement.
- 4.24 If any provision of this Deed of Trust is determined to be invalid or unenforceable, the validity or enforceability of any other provision will not be affected.

4.25 Grantor represents that this Deed of Trust and the Note are given for the purpose of securing Housing Trust Funds provided for rehabilitation and construction costs associated with the Project pursuant to the Loan Agreement.

[Signature Page Follows]

Borrower: JESE REAL ESTATE, LLC

By: [Signature]
Name: Russell Artman
Title: Manager

ATTACHED: EXHIBIT A - Legal Description of Property

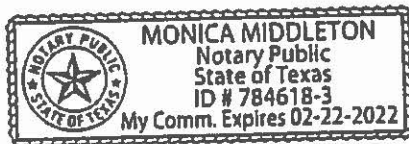
(Acknowledgment)

STATE OF TEXAS

§
§
§

COUNTY OF TRAVIS

This instrument was acknowledged before me on May 7 2019 2019, by
Russell Artman, Manager of JESE Real Estate, LLC,
a Texas limited liability company, on behalf of the company.



[Signature]
Notary Public, State of Texas

RECORD AND RETURN TO:

Austin Housing Finance Corporation
Attn: OHDA Program Manager
1000 East Eleventh Street - Suite 200
Austin, Texas 78702

PREPARED BY:
City of Austin
Law Department

EXHIBIT A

Legal Description of the Property

The legal description of the Property referred to in this instrument is described as follows:

Lot A, HAMPTON PLACE, according to the map or plat thereof, recorded in Volume 47, Page 29, Plat Records, Travis County, Texas.

OWNERSHIP HOUSING DEVELOPMENT ASSISTANCE PROGRAM
LOAN DEFINITIONS

JESE Real Estate, LLC – Croslin Court – 300 E. Croslin Street

Borrower: JESE REAL ESTATE, LLC

Section 1 Annual Compliance Certificate: The annual certificate provided to AHFC, executed by Borrower concerning the compliance of the Project with the Loan Agreement and in the form set forth in an attachment to the Statement of Work and by this reference incorporated in it.

Section 2 Approved Budget: The budget setting forth the Borrower's expenses in connection with the Project and set forth in the Statement of Work and Budget, as the same may be amended from time to time with the AHFC's prior written consent.

Section 3 Architectural Barrier Laws: Any and all architectural barrier laws including, without limitation, Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, the Americans with Disabilities Act of 1990, P.L. 101-336, the Architectural Barriers Act of 1968, 42 U.S.C. 4151 et seq., the Architectural Barrier Act, 23 Tex. Rev. Civ. Stat. art. 9102, all as amended, or any successors thereto.

Section 4 Borrower: The entity identified at the beginning of these definitions and in the first paragraph of the Loan Agreement and any Signatory Party.

Section 5 Commercial Code: The Uniform Commercial Code, Title 1, Texas Business and Commerce Code, as amended from time to time.

Section 6 Compliance Affidavit: The affidavit in a form acceptable to AHFC, executed by Borrower and evidencing payment of contractors and subcontractors with respect to a Draw Request Form.

Section 7 Constituent Parties: Each of those certain legally-created entities, including their successors and assigns, which constitute the ownership structure of the Project.

Section 8 Contracts: All of the right, title, and interest of Borrower, including equitable rights, in, to, and under any and all (i) contracts for the purchase of all or any portion of the Property, whether such contracts are now or at any time hereafter existing, including but without limitation, any and all earnest money or other deposits escrowed or to be escrowed or letters of credit provided or to be provided by the purchasers under such contracts, including all amendments and supplements to and renewals and extensions of such contracts at any time made, and together with all payments, earnings, income, and profits arising from the sale of all or any portion of the Property or from such contracts and all other sums due or to become due under and pursuant thereto and together with any and all earnest money, security, letters of credit or other deposits under any such contracts; (ii) contracts, licenses, permits, and rights relating to living unit equivalents or other entitlement for water,

wastewater, and other utility services whether executed, granted, or issued by a private person or a governmental or quasi-governmental agency, which are directly or indirectly related to, or connected with, the development, ownership, maintenance or operation of the Property, whether such contracts, licenses, and permits are now or at any time thereafter existing, including without limitation, any and all rights of living unit equivalents or other entitlement with respect to water, wastewater, and other utility services, certificates, licenses, zoning variance, permits, and no-action letters from each governmental authority required: (a) to evidence compliance by Borrower and all improvements constructed or to be constructed on the Property with all Legal Requirements applicable to the Property, and (b) to develop and/or operate the Property as a commercial and/or residential project, as the case may be; (iii) any and all right, title, and interest Borrower may have in any financing arrangements relating to the financing of or the purchase of all or any portion of the Property by future purchaser; and (iv) all other contracts which in any way relate to the use, enjoyment, occupancy, operation, maintenance, repair, management or ownership of the Property (save and except any and all Leases), including but not limited to maintenance and service contracts and management agreements.

Section 9 Disposition: Any sale, lease (except as permitted under the Security Agreements), exchange, assignment, conveyance, transfer, trade, or other disposition of all or any portion of the Property (or any interest therein) or all or any part of the beneficial ownership interest in Borrower (if Borrower is a corporation, partnership, general partnership, limited partnership, joint venture, trust, or other type of business association or legal entity).

Section 10 Eligible Buyer: An Income-Qualified Person whose annual household earns no more than 80% of the current Annual Median Family Income for the Austin-Round Rock-San Marcos Metropolitan Statistical Area and has been certified by AHFC as meeting its Asset Limits and Income Limits, and has been qualified by an Institutional Lender for a mortgage to be used to purchase an Affordable Unit.

Section 11 Eligible Household: A "low and moderate-income household" or a "low and moderate-income person" as defined at 24 C.F.R. § 570.3.

Section 12 Environmental Law: Any federal, state, or local law, statute, ordinance, or regulation, whether now or hereafter in effect, pertaining to health, industrial hygiene, or the environmental conditions on, under, or about the Property, including without limitation, the following, as now or hereafter amended: Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. § 9601 et seq.; Resource, Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6901 et seq. as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), Pub. L. 99-499, 100 Stat. 1613; the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; Emergency Planning and Community Right to Know Act of 1986, 42 U.S.C. § 1101 et seq.; Clean Water Act ("CWA"), 33 U.S.C. § 1251 et seq.; Clean Air Act ("CAA"), 42 U.S.C. § 7401 et seq.; Federal Water Pollution Control Act ("FWPCA"), 33 U.S.C. § 1251 et seq.; and any corresponding state laws or ordinances including but not limited to the Texas Water Code ("TWC") § 26.001 et seq.; Texas Health & Safety Code ("THSC") § 361.001 et seq.; Texas Solid Waste Disposal Act, Tex. Rev. Civ. Stat. Ann. art. 4477-7; and regulations, rules, guidelines, or standards promulgated pursuant to such laws, statutes and regulations, as such statutes, regulations, rules, guidelines, and standards are amended from time to time. The terms "release," "removal," "environment," and "disposal" shall have the meanings given such terms in CERCLA, and the term "disposal" shall also have the meaning given it in RCRA; provided that in the event either CERCLA or RCRA is amended so as to broaden

the meaning of any term defined thereby, such broader meaning shall apply subsequent to the effective date of such amendment, and provided further that to the extent the laws of the State of Texas establish a meaning for "release," "removal," "environment," or "disposal," which is broader than that specified in either CERCLA and RCRA, such broader meaning shall apply.

Section 13 Event of Default: Any happening or occurrence described as an "Event of Default" in the Loan Agreement.

Section 14 Federal Funds: Amounts received by the AHFC from HUD, if applicable to this transaction, in connection with a federal program described in the HUD Law.

Section 15 Fixtures: All materials, supplies, equipment, systems, apparatus, and other items now owned or hereafter acquired by Borrower and now or hereafter attached to, or installed in any of the Improvements or the Land, which are now owned or hereafter acquired by Borrower and are now or hereafter attached to the Land or the Improvements, and including but not limited to any and all partitions, dynamos, window screens and shades, draperies, rugs and other floor coverings, awnings, motors, engines, boilers, furnaces, pipes, cleaning, call and sprinkler systems, fire extinguishing apparatus and equipment, water tanks, swimming pools, heating, ventilating, refrigeration, plumbing, laundry, lighting, generating, cleaning, waste disposal, transportation (of people or things, including but not limited to, stairways, elevators, escalators, and conveyors), incinerating, air conditioning and air cooling equipment and systems, gas and electric machinery, appurtenances and equipment, disposals, dishwashers, refrigerators and ranges, recreational equipment and facilities of all kinds, and lighting, traffic control, waste disposal, raw and potable water, gas, electrical, storm and sanitary sewer, telephone and cable television facilities, and all other utilities whether or not situated in easements, together with all accessions, appurtenances, replacements, betterments, and substitutions for any of the foregoing and the proceeds thereof.

Section 16 Government Authority: Any and all applicable courts, boards, agencies, corporations, commissions, offices, or authorities of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city or otherwise), whether now or hereafter in existence.

Section 17 Hazardous Substance: Any substance, product, waste, or other material which is or becomes listed, regulated, or addressed as being a toxic, hazardous, polluting, or similarly harmful substance under any Environmental Law, including without limitation: (i) any substance included within the definition of "hazardous waste" pursuant to Section 1004 of RCRA; (ii) any substance included within the definition of "hazardous substance" pursuant to Section 101 of CERCLA; (iii) any substance included within (a) the definition of "regulated substance" pursuant to Section 26.342(11) of TWC; or (b) the definition of "hazardous substance" pursuant to Section 361.003(11) of THSC; (iv) asbestos; (v) polychlorinated biphenyls; (vi) petroleum products; (vii) underground storage tanks, whether empty, filled or partially filled with any substance; (viii) any radioactive materials, urea formaldehyde foam insulation or radon; (ix) any substance included within the definition of "waste" pursuant to Section 30.003(b) of TWC or "pollutant" pursuant to Section 26.001(13) of TWC; and (x) any other chemical, material or substance, the exposure to which is prohibited, limited or regulated by any Governmental Authority on the basis that such chemical, material or substance is toxic, hazardous or harmful to human health or the environment.

Section 18 HUD: The United States Department of Housing and Urban Development, a federal agency.

Section 19 Impositions: (i) All real estate and personal property taxes, charges, assessments, standby fees, excises, and levies and any interest, costs, or penalties with respect thereto, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever which at any time prior to or after the execution hereof may be assessed, levied, or imposed upon any property, real, personal or mixed, or upon the Property or the ownership, use, occupancy, or enjoyment thereof, or any portion thereof, or the sidewalks, streets, or alleyways adjacent thereto; (ii) any charges, fees, license payments, or other sums payable for or under any easement, license, or agreement maintained for the benefit of the Property; (iii) water, gas, sewer, electricity, and other utility charges and fees relating to the Property; and (iv) assessments and charges arising under any subdivision, condominium, planned unit development, or other declarations, restrictions, regimes, or agreements affecting the Property.

Section 20 Improvements: Any and all buildings, covered garages, air conditioning towers, open parking areas, structures and other improvements of any kind or nature, and any and all additions, alterations, betterments or appurtenances thereto, now or at any time hereafter situated, placed, or constructed upon the Land or any part thereof; including, without limitation, the construction by Borrower of the improvements described in the Statement of Work.

Section 21 Indebtedness: (i) The principal of, interest on, or other sums evidenced by the Note or other Loan Documents, adjusted by such credits or forgiveness of amounts otherwise due as allowed in the Note or the other Loan Documents; (ii) any other amounts, payments, or premiums payable under the Loan Documents; (iii) such additional or future sums (whether or not obligatory), with interest thereon, as may hereafter be borrowed or advanced from AHFC, its successors or assigns, by the then record owner of the Property, when evidenced by a promissory note which, by its terms, is secured by the Security Agreements (it being contemplated by Borrower and AHFC that such future indebtedness may be incurred); and (iv) with respect to the Project only, any and all other indebtedness, obligations, and liabilities of any kind or character of Borrower to AHFC, now or hereafter existing, absolute or contingent, due or not due, arising by operation of law or otherwise, or direct or indirect, primary or secondary, joint, several, joint and several, fixed or contingent, secured or unsecured by additional or different security or securities, including indebtedness, obligations, and liabilities to AHFC by Borrower as a member of any partnership, joint venture, trust or other type of business association, or other group, and whether incurred by Borrower as principal, surety, endorser, guarantor, accommodation party or otherwise, and any and all renewals, modifications, amendments, restatements, rearrangements, consolidations, substitutions, replacements, enlargements, and extensions thereof, it being contemplated by Borrower and AHFC that Borrower may hereafter become indebted to AHFC in further sum or sums. Notwithstanding the foregoing provisions of this definition, the Security Agreements shall not secure any such other loan, advance, debt, obligation or liability with respect to which AHFC is by applicable law prohibited from obtaining a lien on real estate, nor shall this definition operate or be effective to constitute or require any assumption or payment by any person, in any way, of any debt or obligation of any other person to the extent that the same would violate or exceed the limit provided in any applicable usury or other law.

Section 22 Insurance Requirement: The insurance coverages required to be maintained on the Property in an amount equal to the sum of (a) the amount of the Loan, plus (b) the amount of the Superior Loan, and described in Exhibit "D" which is attached to the Loan Agreement and by this reference incorporated in it.

Section 23 Land: All that certain real property or interest therein situated in the County of Travis, Texas, more particularly described in the Deed of Trust and Security Agreement and Financing Statement dated of even date with the Loan Agreement, together with all right, title, interest, and privileges of Borrower in and to (i) all streets, ways, roads, alleys, easements, rights-of-way, licenses, rights of ingress and egress, vehicle parking rights and public places, existing or proposed, abutting, adjacent, used in connection with or pertaining to such real property or the improvements thereon; (ii) any strips or gores of real property between such real property and abutting or adjacent properties; (iii) all water and water rights, timber and crops pertaining to such real estate; and (iv) all appurtenances and all reversions and remainders in or to such real property

Section 24 Legal Requirements: (i) Any and all present and future judicial decisions, statutes (including Architectural Barrier Laws, Environmental Laws and HUD Law), rulings, rules, regulations, permits, certificates, or ordinances (including City of Austin Ordinances) of any Governmental Authority in any way applicable to Borrower, any Signatory Party or the Property, including, without limiting the generality of the foregoing, the ownership, use, occupancy, possession, operation, maintenance, construction, alteration, repair, or reconstruction thereof, (ii) any and all covenants, conditions, and restrictions contained in any deeds, other forms of conveyance, or in any other instruments of any nature that relate in any way or are applicable to the Property or the ownership, use, or occupancy thereof, (iii) Borrower's presently or subsequently effective bylaws and articles of incorporation, operating agreement and articles of organization or partnership, limited partnership, joint venture, trust, or other form of business association agreement, (iv) any and all Leases, (v) any and all Contracts, (vi) the Federal Requirements, and (vii) any and all leases, other than those described in (iv) above, and other contracts (written or oral), other than those described in (v) above, of any nature that relate in any way to the Property and to which Borrower may be bound, including, without limiting the generality of the foregoing, any lease or other contract pursuant to which Borrower is granted a possessory interest in and to the Land and/or the Improvements. Further, any changes in applicable statutes, rulings, rules, regulations, permitting certificates, or ordinances of any Governmental Authority or the Federal Requirements are automatically incorporated herein without specific reference.

Section 25 Loan Documents: This Loan Agreement, the Note, the Deed of Trust and Security Agreement and Financing Statement, the Declaration of Restrictive Covenant Regarding Affordable Housing Requirements and any and all other documents now or hereafter executed by Borrower, or any other person or party in connection with the loan evidenced by the Loan Agreement or in connection with the payment of the Indebtedness or the performance or discharge of the Obligations.

Section 26 Loan Proceeds: The Loan amounts paid by AHFC to Borrower in accordance with the terms and conditions of this Loan Agreement.

Section 27 Material Adverse Effect: Any material and adverse effect on (i) the business condition (financial or otherwise), operations, prospects, results of operations, capitalization, liquidity or any properties of Borrower, taken as a whole, (ii) the value of the Property, (iii) the ability of Borrower (or if Borrower is a partnership, joint venture, or other type of business association, of any of the parties comprising Borrower or of the ground lessor if the estate held by Borrower in the Land is a leasehold estate) to pay and perform the Indebtedness and the Obligations, respectively, or (iv) the validity, enforceability or binding effect of any of the Loan Documents.

Section 28 Mediation: A forum in which an impartial Mediator facilitates communication between the parties to promote reconciliation, settlement or understanding among them. At a minimum process shall include: 1) conducting an on-site investigation, if the Mediator deems it necessary, appropriate, by the Mediator for fact gathering purposes, 2) a meeting of all parties for the exchange of points of view, and 3) separate meetings between the Mediator and each party to the dispute for the formulation of resolution alternatives.

Section 29 Mediator: A person selected in accordance with the provisions of the Loan Agreement trained in mediation skills. The person selected may also be a person who is trained in the subject matter of the dispute and/or a contract interpretation expert. The parties agree to act in good faith in the selection of the person and to give consideration to qualified individuals nominated by either party. If the parties fail to agree on a person within thirty (30) calendar days of initiation of the Mediation, the Mediator shall be selected by the Travis County Dispute Resolution Center.

Section 30 Minerals: All substances in, on, under, or above the Land which are now, or may become in the future, intrinsically valuable (that is, valuable in themselves) and which may be now or in the future enjoyed through extraction or removal from the property, including without limitation, oil, gas, and all other hydrocarbons, coal, lignite, carbon dioxide and all other non-hydrocarbon gases, uranium and all other radioactive substances, and gold, silver, copper, iron and all other metallic substances or ores.

Section 31 Monitors: Those persons employed by the Austin Housing Finance Corporation, the City of Austin, and HUD who are required either by policy, ordinance, regulation or statute to ensure the Borrower's ongoing compliance with the terms and conditions of the Loan Documents so long as the Loan Documents remain in effect.

Section 32 Property: The Land, Minerals, Fixtures, Improvements, Personalty, Contracts, Leases and Rents, and any interest of Borrower now owned or hereafter acquired in and to the Land, Minerals, Fixtures, Improvements, Personalty, Contracts, Leases and Rents, together with any and all other security and collateral of any nature whatsoever, now or hereafter given for the repayment of the Indebtedness or the performance and discharge of the Obligations. As used in the Loan Documents, the term "Property" shall be expressly defined as meaning all or, where the context permits or requires any portion of the above and all or, where the context permits or requires any interest therein.

Section 33 Obligations: Any and all of the covenants, conditions, warranties, representations, and other obligations (other than to repay the Indebtedness) made or undertaken by Borrower, or any other person or party to the Loan Documents, to AHFC, Trustee, or others as set forth in the Loan Documents, and in any deed, lease, sublease, or other form of conveyance, or any other agreement pursuant to which Borrower is granted a possessory interest in the Land.

Section 34 Performance Report: The report required to be filed with the AHFC in the form set forth in an attachment to the Statement of Work and by this reference incorporated in it or as otherwise required by AHFC which sets forth Borrower's performance activities under the Loan Agreement, the Program Guidelines and the Statement of Work for the reporting period.

Section 35 Personalty: All of the right, title, and interest of Borrower in and to (i) furniture, furnishings, equipment, machinery, goods (including, but not limited to, crops, farm products, timber and timber to be cut, and extracted Minerals); (ii) general intangibles, money, insurance proceeds,

accounts, contract and subcontract rights, trademarks, trade names, copyrights, chattel paper, instruments, investment property, letters of credit, inventory; (iii) all cash funds, fees (whether refundable, returnable or reimbursable), deposits or other funds or evidences of cash, credit or indebtedness deposited by or on behalf of Borrower with any Governmental Authority, providers of utility services, public or private, including specifically, but without limitation, all refundable, returnable, or reimbursable tap fees, utility deposits, commitment fees and development costs, any awards, remunerations, reimbursements, settlements, or compensation heretofore made or hereafter to be made by any Governmental Authority pertaining to the Property, including, but not limited to, those for any vacation of, or change of grade in, any streets affecting the Land or Improvements and those for municipal utility district or other utility costs incurred or deposits made in connection with the Land; and (iv) all other personal property of any kind or character as defined in and subject to the provisions of the Commercial Code (Chapter 9 - Secured Transactions); any and all of which are now owned or hereafter acquired by Borrower, and which are now or hereafter situated in, on, or about the Land or the Improvements, and necessary to the complete and proper planning, development, construction, financing, use, occupancy, or operation thereof, or acquired (whether delivered to the Land or stored elsewhere) for use in or on the Land or the Improvements, together with all accessions, replacements, and substitutions thereto or therefor and the proceeds thereof.

Section 36 Program Guidelines: The Ownership Housing Development Assistance Program Loan Guidelines approved by the Austin Housing Finance Corporation and the City Council of the City of Austin which describes the program requirements of the Project that is proposed to be financed by proceeds from the Loan.

Section 37 Project: The rehabilitation and development of the Property as described in **Exhibit "B"** (Statement of Work and Budget) attached to the Loan Agreement.

Section 38 Signatory Party: Any signatory to any of the Loan Documents that signs on Borrower's behalf that is a corporation, general partnership, limited partnership, limited liability company, joint venture, trust, or other type of business organization.

Section 39 Statement of Work and Budget: The work required to be completed with respect to the Property which will be funded by the Loan and described in **Exhibit "B"** which is attached to the Loan Agreement and by this reference incorporated in it.

Section 40 Tax Code: The U.S. Internal Revenue Code of 1986, as amended, any and all U.S. Department of Treasury Regulations issued pursuant thereto in temporary or final form, and any and all federal, state, county, municipal and city rules and rulings, notices, requirements, statutes, regulations or laws governing or relating to taxes and/or taxation, and any and all successor statutes thereof.

Promissory Note
JESE REAL ESTATE, LLC
OHDA Program – Croslin Court

Date: May 7, 2019

Borrower: JESE REAL ESTATE, LLC, a Texas limited liability company

Borrower's Mailing Address: 7606 Bellflower CV
Austin, TX 78759

Lender: AUSTIN HOUSING FINANCE CORPORATION, a Texas public, nonprofit corporation organized and operated under Chapter 394, Texas Local Government Code

Place for Payment: 1000 East 11th Street, 2nd Floor
Austin, Travis County, Texas 78702

Principal Amount: \$538,355 (FIVE HUNDRED THIRTY EIGHT THOUSAND THREE HUNDRED FIFTY-FIVE AND 00/100 U.S. DOLLARS)

Annual Interest Rate: 0 %

Maturity Date: September 30, 2024

Annual Interest Rate on Matured, Unpaid Amounts: 10% (ten percent)

Terms of Payment (principal and interest):

Upon Borrower entering into a Declaration of Restrictive Covenant Regarding Affordable Housing Requirements in accordance with the terms of the Ownership Housing Development Assistance Program Loan Agreement of even date with this Note (the "Loan Agreement") for each condominium rehabilitated, sold, and closed, a partial release of the lien will be provided to the Borrower at the time of closing on the respective condominium. Provided Borrower has not violated any of the terms and conditions of the Loan Agreement payment of principal and interest shall be forgiven on the Maturity Date.

If Lender determines that there has been an uncured default of any of the terms and conditions of the Loan Agreement the outstanding principal and interest owed under this Note will become due and payable from the date of uncured default until the Maturity Date.

Security for Payment:

The Note is secured by a Deed of Trust Security Agreement and Financing Statement of even date herewith ("Deed of Trust") from Borrower to ROSIE TRUELOVE, Trustee, which covers the real property described in Exhibit "A" attached to the Deed of Trust and by this reference incorporated in this Note.

Other Security for Payment:

Borrower promises to pay to the order of Lender the Principal Amount plus interest at the Annual Interest Rate. This Note is payable at the Place for Payment and according to the Terms of Payment. All unpaid amounts are due by the Maturity Date. After maturity, Borrower promises to pay any unpaid principal balance plus interest at the Annual Interest Rate on Matured, Unpaid Amounts.

If Borrower defaults in the payment of this Note or in the performance of any obligation in any instrument securing or collateral to this Note, Lender may declare the unpaid principal balance and earned interest on the Note immediately due. Borrower and each surety, endorser, and guarantor waive all demand for payment, presentation for payment, notice of intention to accelerate maturity, notice of acceleration of maturity, protest, and notice of protest, to the extent permitted by law.

Borrower also promises to pay reasonable attorney's fees and court and other costs if this Note is placed in the hands of an attorney to collect or enforce the Note. These expenses will bear interest from the date of advance at the Annual Interest Rate on Matured, Unpaid Amounts. Borrower will pay Lender these expenses and interest on demand at the Place for Payment. These expenses and interest will become part of the Note and will be secured by any security for payment.

Borrower may prepay this Note in any amount at any time before the Maturity Date without penalty or premium. Partial prepayments will be credited to the Principal Amount; installments will continue as scheduled and interest on that prepaid principal will immediately cease to accrue.

Interest on the debt evidenced by this Note will not exceed the maximum rate or amount of nonusurious interest that may be contracted for, taken, reserved, charged, or received under law. Any interest in excess of that maximum amount will be credited on the Principal Amount or, if the Principal Amount has been paid, refunded. On any acceleration or required or permitted prepayment, any excess interest will be canceled automatically as of the acceleration or prepayment or, if the excess interest has already been paid, credited on the Principal Amount or, if the Principal Amount has been paid, refunded. This provision overrides any conflicting provisions in this Note and all other instruments concerning the debt.

The execution and delivery of this Note are required under the Loan Agreement. If any provision of this Note conflicts with any provision of the Loan Agreement or the Deed of Trust of the same transaction between Lender and Borrower, first the provisions of this Note, then the Loan Agreement, and then the Deed of Trust will govern to the extent of the conflict.

IF BORROWER SHALL DEFAULT, BREACH, OR COMMIT AN UNCURED EVENT OF DEFAULT WITH RESPECT TO THE LOAN AGREEMENT AND EXECUTED BY BORROWER AND LENDER, THE DEFAULT UNDER THE LOAN AGREEMENT SHALL BE A DEFAULT UNDER THIS NOTE.


This Note will be construed under the laws of the state of Texas, without regard to choice-of-law rules of any jurisdiction.

The Borrower is responsible for all obligations represented by this Note.

When the context requires, singular nouns and pronouns include the plural.

EXECUTED AND DELIVERED as of the date first above written.

Borrower: JESE REAL ESTATE, LLC

By: 
Name: Russel ARTMAN
Title: Manager

PREPARED IN THE LAW OFFICE OF:

City of Austin
Law Department

FILED AND RECORDED
OFFICIAL PUBLIC RECORDS



Dana DeBeauvoir

Dana DeBeauvoir, County Clerk
Travis County, Texas

May 08, 2019 04:23 PM Fee: \$ 114.00

2019066441

Electronically Recorded

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CFT
19-415043-PM

DECLARATION OF RESTRICTIVE COVENANT REGARDING
AFFORDABLE HOUSING REQUIREMENTS

For
Croslin Court
Austin, Travis County, Texas

This Restrictive Covenant regarding Affordable Housing Requirements for the condominium project proposed at 300 East Croslin St., Austin, Travis County, Texas 78752 (the "Restrictive Covenant"), is executed on May 7, 2019 ("Effective Date"), by JESE Real Estate, LLC a Texas limited liability company ("Declarant") and is as follows:

RECITALS

- A. Declarant owns that certain real property located at 300 East Croslin St., Austin, Travis County, Texas 78752, further described as Lot A, HAMPTON PLACE, according to the map or plat thereof, recorded in Volume 47, Page 29, Plat Records, Travis County, Texas, and more particularly described below:

Condominium Unit Numbers 101, 102, 103, 107, 108, 109, 110, 111, 112, 113, 114, 115, 117, 118, 119, 120, and 121, of CROSLIN COURT CONDOMINIUMS, a Condominium project in Travis County, Texas, as fully described in and as located, delineated and as defined in the Declaration of Condominium Regime for Croslin Court Condominiums, dated February 28, 2019, recorded under Document No. 2019028668, Official Records of Travis County, Texas (the "Property").

- B. Definitions:

Affordable Housing Requirements. The term "Affordable Housing Requirements" means the requirements in the Restrictive Covenant burdening the Property and substantially in the form attached as Exhibit "A" which shall restrict each Affordable Unit(s) to be primarily occupied by a homeowner household whose adjusted gross income for the year immediately preceding the date of occupancy of the applicable Affordable Unit is no more than 80 percent of the current Annual Median Family Income for the Austin-Round Rock-San Marcos Metropolitan Statistical Area and is verified in writing as acceptable by the Austin Housing Finance Corporation.

Affordable Unit(s). The term "Affordable Units" means only the condominium units from Croslin Court Condominiums designated in Section A of the Recitals of this Restrictive Covenant. The term "Affordable Unit" is utilized when referencing a single condominium unit from the units from Croslin Court Condominiums designated in Section A of the Recitals of this Restrictive Covenant.

AHFC. The term "AHFC" refers to the Austin Housing Finance Corporation, a Texas public, nonprofit corporation organized and operated under Chapter 394, Texas Local Government Code.

Loan Agreement. The term "Loan Agreement" means the Ownership Housing Development Assistance Program Loan Agreement of even date with this Restrictive Covenant.

Owners. The term "Owner" means, individually, and the term "Owners" means, collectively, Declarant and all future owners of the fee interest or any portion of the Property (whether such fee interest is obtained through a purchase from Declarant or through a purchase at a foreclosure sale or trustee's sale or through a deed in lieu of foreclosure) and their successors and assigns.

- C. Declarant has agreed to impose upon the Property these covenants and conditions for the benefit of the Property.

NOW, THEREFORE, Declarant declares that the Property is subject to the following covenants, conditions and restrictions, which run with the Property and bind all parties having right, title, or interest in or to such portion of the Property or any part, their respective heirs, successors, and assigns, and which inure to the benefit of each Owner. Each contract, deed or conveyance of any kind conveying all or a portion of the Property will conclusively be held to have been executed, delivered, and accepted subject to the following covenants, conditions and restrictions, regardless of whether or not they are set out in full or by reference in said contract, deed or conveyance.

SPECIFIC AGREEMENTS AND RESTRICTIONS:

1. Recitals Incorporated. The above Recitals and all terms defined therein are incorporated into this Restrictive Covenant for all purposes as if set forth in full herein.
2. Compliance with Affordability Housing Requirements. The Declarant received the benefit of a loan from AHFC, described in the Loan Agreement, as may be amended, and the Declarant and Owner shall reserve the Property as affordable, for a period of not less than 99 years from the Effective Date.
3. Breach Does Not Permit Termination. Notwithstanding anything to the contrary contained herein, no breach of this Restrictive Covenant entitles the Owners to cancel, rescind or otherwise terminate this Restrictive Covenant, but such limitations do not affect in any manner any other rights or remedies which the Owners may have hereunder by reason of any breach of this Restrictive Covenant.
4. General Provisions.
 - A. Inurement. This Restrictive Covenant and the restrictions created hereby inure to the benefit of and bind Owners, and their successors and assigns. When an Owner conveys all or any portion of the Property, that former Owner will thereupon be released and discharged from any and all further obligations, if any, under this Restrictive Covenant that it had in connection with the Property conveyed by it from and after the date of recording of such conveyance, but no such sale releases that former Owner from any liabilities, if any, actual or contingent, existing as of the time of such conveyance.
 - B. Duration. Unless this Restrictive Covenant is modified, amended, or terminated in accordance with Section 4.K., this Restrictive Covenant begins on the Effective Date of this Restrictive Covenant for a period of not less than ninety-nine (99) years from the said Effective Date. Compliance with the Affordability Housing Requirements shall be evidenced by the recordation in the Official Records of Travis County, Texas, of a Resale

Restriction Agreement and Covenant Limitations on Resale Price and Buyer Income in the form attached hereto as Exhibit "A" and made a part hereof for all purposes ("Resale Restriction"), which shall impose resale price and buyer income limitations and afford AHFC certain rights to cure a default in any mortgage loan as provided in the Resale Restriction on Affordable Units.

- C. Non-Merger. This Restrictive Covenant will not be subject to the doctrine of merger, even though the underlying fee ownership of the Property, or any parts thereof, is vested in one party or entity.
- D. Severability. The provisions of this Restrictive Covenant must be deemed to be independent and severable, and the invalidity or partial invalidity of any provision or portion hereof does not affect the validity or enforceability of any other provision.
- E. Entire Agreement. This Restrictive Covenant, and the exhibits attached hereto contain all the representations and the entire agreement between the parties to this Restrictive Covenant with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements are superseded in total by this Restrictive Covenant and the exhibits attached hereto. The provisions of this Restrictive Covenant will be construed as a whole according to their common meaning and not strictly for or against any Owner.
- F. Captions. The captions preceding the text of each section and subsection hereof are included only for convenience of reference and will be disregarded in the construction and interpretation of this Restrictive Covenant.
- G. Governing Law: Place of Performance. This Restrictive Covenant and all rights and obligations created hereby will be governed by the laws of the State of Texas. This Restrictive Covenant is performable only in the county in Texas where the Property is located.
- H. Notices. Any Notice to the Owners or AHFC must be in writing and given by delivering the same to such party in person, by expedited, private carrier services (such as Federal Express) or by sending the same by certified mail, return receipt requested, with postage prepaid to the intended recipient's last known mailing address. All notices under this Restrictive Covenant will be deemed given, received, made or communicated on the date personal delivery is effected or, if mailed, on the delivery date or attempted delivery date shown on the return receipt.
- I. Negation of Partnership. None of the terms or provisions of this Restrictive Covenant will be deemed to create a partnership between or among the Declarant, any Owner, or the AHFC in their respective businesses or otherwise; nor will it cause them to be considered joint ventures or members of any joint enterprise.
- J. Enforcement. If any person, persons, corporation, or entity of any other character, violates or attempts to violate this Restrictive Covenant, it will be lawful for AHFC, its successors and assigns, to prosecute proceedings at law, or in equity, against the person or entity violating or attempting to violate this Restrictive Covenant and to prevent said

person or entity from violating or attempting to violate such covenant. The failure at any time to enforce this Restrictive Covenant by AHFC, its successors and assigns, whether any violations hereof are known or not, does not constitute a waiver or estoppel of the right to do so.

- K. **Modification and Amendment.** This Restrictive Covenant may only be modified, amended or terminated upon the filing of a written modification, amendment or termination document in the Official Records of Travis County, Texas, which has been executed, acknowledged, and approved by (i) the Owner; and (ii) the officer or employee signing on behalf of AHFC. The joint action shall only become effective after it is reduced to writing and signed by the parties listed above. AHFC and the Owner may amend this Restrictive Covenant to only modify the Property Description, and AHFC and Owner may terminate only upon a redevelopment of the Property or at the expiration of the duration in Section 4.B.

Executed to be effective on May 7, 2019.

DECLARANT: JESE REAL ESTATE, LLC

By: [Signature]

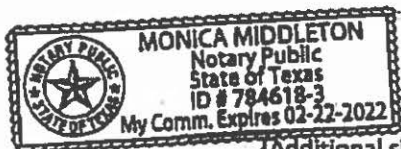
Name: Russell Artman
Title: Manager of
Jese Real Estate LLC

ACKNOWLEDGMENT

STATE OF TEXAS §
§
COUNTY OF TRAVIS §

The foregoing instrument was acknowledged before me, the undersigned Notary Public, 7 day of May, 2019, by Russell Artman, Manager of Jese Real Estate LLC

Given under my hand and seal of office on May 7, 2019.



[Signature]
Notary Public, State of Texas

{Additional signature page to follow}

AUSTIN HOUSING FINANCE CORPORATION:

By: *Rosie Truelove*

Rosie Truelove
Treasurer

THE STATE OF TEXAS §
§
COUNTY OF TRAVIS §

This instrument was acknowledged before me on this the 7 day of May, 2019, by
Rosie Truelove, as Treasurer of Austin Housing Finance Corporation on behalf of such corporation.

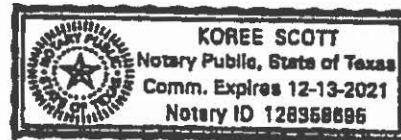
Given under my hand and seal of office on May 7, 2019.

Koree Scott
Notary Public, State of Texas

APPROVED AS TO FORM:

BY CITY OF AUSTIN LAW DEPARTMENT

Shelby C. Reed
Shelby C. Reed
Assistant City Attorney



AFTER RECORDING RETURN TO:
Austin Housing Finance Corporation
1000 East 11th Street, Suite 200
Austin, TX 78702
Attn: Ellis Morgan

[NOTICE TO TITLE COMPANY: THIS EXHIBIT SHOULD BE COMPLETED IN FULL BY THE HOME BUYER AT CLOSING AND RECORDED. PLEASE CONTACT AUSTIN HOUSING FINANCE CORPORATION IF YOU HAVE ANY QUESTIONS OR NEED ASSISTANCE.]

EXHIBIT "A"

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

**RESALE RESTRICTION AGREEMENT AND COVENANT
LIMITATIONS ON RESALE PRICE and BUYER INCOME**

Compliance with the provisions of this Covenant shall be deemed to be a requirement of title.

AFFORDABLE HOUSING COVENANT

This Affordable Housing Agreement and Covenant ("Covenant") is entered into as of the _____ day of _____, 20__ ("Effective Date"), by and _____ ("Declarant," or, alternatively, "Grantor") and the AUSTIN HOUSING FINANCE CORPORATION, a Texas public, nonprofit corporation organized and operated under Chapter 394, Texas Local Government Code ("AHFC"). This Covenant applies only to the following described real property, including improvements, in Travis County, Texas ("Affordable Unit"):

Condominium Unit Number _____ of CROSLIN COURT CONDOMINIUMS, and the space encompassed by the boundaries thereof, the limited common elements appurtenant thereto, together with an undivided interest in the general common elements located in and being part of CROSLIN COURT CONDOMINIUMS, a Condominium project in Travis County, Texas, as fully described in and as located, delineated and as defined in the Declaration of Condominium Regime for Croslin Court Condominiums, dated February 28, 2019, recorded under Document No. 2019028668, Official Public Records of Travis County, Texas.

RECITALS

WHEREAS, AHFC supports the goal of preserving affordable homeownership opportunities through long term affordability strategies; and

WHEREAS, the Affordable Unit (more completely described below in Section 1. Definitions) is subject to the Affordable Housing Declaration defined below in Section 1, but none of the other Condominium Units in the Condominium Project, other than the Affordable Units, are subject to the Affordable Housing Declaration or this Covenant; and

**DECLARATION OF RESTRICTIVE COVENANT REGARDING
AFFORDABLE HOUSING REQUIREMENTS**

WHEREAS, the Affordable Housing Declaration requires, inter alia, that Grantor impose this Covenant on the Affordable Unit; and

WHEREAS, in accordance with such requirement, Grantor has agreed to impose the affordable housing restrictions set forth in this Covenant against the Affordable Unit; and

WHEREAS, the intent of AHFC is to preserve the affordability of the Affordable Units for Eligible Households, including a surviving spouse or heirs of an Eligible Household; and

WHEREAS, subsequent purchasers will benefit from the limitations on the resale purchase price which this Covenant requires; and

WHEREAS, the intent of the Grantor is to preserve through this Covenant the affordability of the Affordable Unit for Eligible Households, including their surviving spouse, domestic partner, lineal descendants or siblings, and to assign to AHFC the right to enforce compliance with this Covenant.

NOW THEREFORE, in consideration of the benefits received by the parties, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Definitions

The following terms shall have the following meanings herein:

"Acknowledgment of Affordability Restrictions" means an acknowledgement in substantially the form of Exhibit 1 attached hereto, confirming the Owner's review and understanding of the terms and conditions of this Covenant.

"Median Family Income" or "MFI" means the Median Family Income reported annually for single persons and households of various sizes by the United States Department of Housing and Urban Development, or by any successor United States Government department, agency, or instrumentality, for the metropolitan statistical area which includes the City of Austin, Texas.

"Affordable Housing Declaration" means the Declaration of Restrictive Covenant Regarding Affordable Housing Requirements for Croslin Court, recorded under Document No. _____ of the Official Public Records of Travis County, Texas.

"Asset Limits" means aggregate personal assets, including cash, personal property and real property assets of not more than Fifty-Thousand Dollars (\$50,000.00), excluding employer or tax deferred retirement plan assets and any amount used as the down payment for an Affordable Unit. The Asset Limit shall be increased or decreased annually in accordance with the Federal Costs of Living Adjustment (COLA).

"Certified" means written acknowledgement of AHFC that an individual is an Eligible Buyer, Owner or Income Qualified Person, based on the Qualified Person's previous year federal income tax return and year to date income statements or paycheck stubs as the case may be and meets the requirements of this Covenant for ownership of an Affordable Unit.

"City" means the City of Austin, a Texas home rule municipality.

"Condominium Declaration" means the CROSLIN COURT CONDOMINIUMS, a Condominium project in Travis County, Texas, as fully described in and as located, delineated and as defined in the Declaration of Condominium Regime for Croslin Court Condominiums, dated February 28, 2019, recorded under Document No. 2019028668, Official Public Records of Travis County, Texas.

"Condominium Project" means the Project defined in the Condominium Declaration.

"Eligible Buyer" means an Income-Qualified Person whose annual household earns no more than 80% of the current Annual Median Family Income for the Austin-Round Rock-San Marcos Metropolitan Statistical Area ("AMSA") and has been certified by AHFC as meeting its Asset Limits and Income Limits, and has been qualified by an Institutional Lender for a mortgage to be used to purchase the Affordable Unit.

"Eligible Capital Improvement" means (i) a capital improvement to an Affordable Unit that is reasonably necessary to maintain the Affordable Unit in a good state of repair including necessary structural, mechanical, electrical and plumbing repairs, but specifically excludes normal and customary repairs and maintenance to the Affordable Unit and normal and customary repairs and maintenance to the mechanical, electrical or plumbing systems in the Affordable Unit; and (ii) replacing built-in appliances and fixtures. Eligible Capital Improvements shall also include amounts paid by the Owner of an Affordable Unit as a special assessment under the Condominium Declaration provided the special assessment is for capital improvement to the Condominium Project that is reasonably necessary to maintain the Condominium Project in a good state of repair including necessary structural, mechanical, electrical and plumbing repairs, but specifically excludes normal and customary repairs and maintenance to the Condominium Project.

"First Deed of Trust" means a deed of trust or mortgage which is recorded senior to any other deeds of trust or liens against an Affordable Unit to secure a loan used to purchase an Affordable Unit made by an Institutional Lender.

"HUD" means the United States Department of Housing and Urban Development.

"HUD Low Income Limit" means the maximum gross household income which allows a household to be considered "low income" for the purposes of HUD financial assistance. These limits are reported annually by HUD and reflect the low income limit for a particular area.

"Income" means the definition of income under Section 8 of the United States Housing Act of 1937, codified at 42 U.S.C.S. § 1437a(b)(1990), as further determined by the United States Secretary of Agriculture in 24 CFR § 813.106 (1997). In the event that Section 8 is repealed or the definition of income under Section 8 is substantially modified, then "Income" shall mean the anticipated total income for the next twelve month period received from all sources by each member of the household, excluding, however, temporary or non-recurring income (including gifts), income from the employment of children under age 18, payments for the care of foster children or foster adults, and amounts received specifically for the reimbursement of medical expenses for a member of the household.

"Income Limits" means a projected income of not more than 80% of the median family income for the AMSA as defined annually by HUD, adjusted to reflect the family size of the buyer or buyers.

"Income-Qualified Person(s)" means a person or persons who has been certified in writing by AHFC, as meeting AHFC's Asset Limits and Income Limits.

"Institutional Lender" means any bank or any other institutional lender which is licensed to engage in the business of providing purchase money mortgage financing for residential real property.

"Notice of Exercise of Right" means the AHFC's written notice to Owner of its exercise of its Purchase Right, or assignment of such right to an Eligible Buyer.

"Notice of Waiver of Right" means AHFC's written notice to Owner of its waiver of its Purchase Right.

"Owner" means any buyer, devisee, transferee, grantee, owner or holder of title of an Affordable Unit or any interest in an Affordable Unit.

"Purchase Right" means AHFC's limited right to purchase the Affordable Unit solely as provided in Subsection 6.B. of this Covenant.

"Transfer" means any sale, assignment or transfer, voluntary, involuntary or by operation of law (whether by deed, contract of sale, gift, devise, or bequest) of any interest in the Affordable Unit, including but not limited to a fee simple interest, a joint tenancy interest, a tenancy in common, a life estate, a leasehold interest (except for a lease allowed by this Covenant), or any interest evidenced by a contract for sale by which possession of the Affordable Unit is transferred and Owner retains title.

2. **Requirement of Title and Term of Affordability**

Compliance with the provisions of this Covenant shall be deemed to be a requirement of title. Eligible Buyers must have a valid written income certification from AHFC approved within nine months from the closing of the purchase of an Affordable Unit in order to be eligible to purchase an Affordable Unit.

3. **Term**

This Covenant shall remain in effect for a period of ninety-nine (99) years from the Effective Date unless AHFC ("Covenant Term"), its successor or assigns, executes and records a notice of termination in the Official Records of Travis County, Texas.

4. **Required Conveyance Deed Language**

Grantor and each Owner shall use a form of special warranty deed, which includes in 12 point type and in all caps on the front page thereof the language immediately below:

THIS DEED IS DELIVERED AND ACCEPTED SUBJECT TO THE PROVISIONS AND CONDITIONS
SET FORTH IN THAT CERTAIN AFFORDABLE HOUSING COVENANT, DATED AS OF

_____, 20____, RECORDED UNDER DOCUMENT NO. _____ OF THE
OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS.

5. Eligible Buyers

A. Title to the Affordable Unit may only be transferred to an Eligible Buyer, Eligible Household or Income Qualified Person; provided, however, upon the death of an Eligible Buyer, the Affordable Unit may be transferred to the surviving spouse, domestic partner, lineal descendants or siblings of an Eligible Buyer without any of such persons having to requalify as an Eligible Buyer. In order to qualify as an Eligible Buyer, the buyer's assets shall not exceed the Asset Limits and the buyer's projected income may be not be more than 80% of the MFI for ASMA as defined annually by HUD, adjusted to reflect the family size of the buyer or buyers. If the Affordable Unit is sold jointly to more than one buyer in the same transaction, or if the Affordable Unit is sold to a buyer who is married or who has a domestic partner, or if the Affordable Unit is sold to one or more buyers who have the custody of children under the age of eighteen, then (a) the buyer or buyers shall be considered to be an Eligible Household for the purposes of this Covenant; (b) the income of all persons in the household (which will include each buyer of the Affordable Unit, the spouse or domestic partner of the buyer, and all buyer's children who are age eighteen or older) shall be used in determining the buyer's(s') income; and (c) the HUD Low Income Limit shall be adjusted to reflect the household's size.

B. The following transfers are exceptions to the above qualification requirement as an Eligible Buyer or Income Qualified Person, provided that the new Owners, other than an estate, shall use the Affordable Unit as his or her principal residence:

- i. A transfer resulting from the death of an Owner where the transfer is to the spouse or domestic partner of the Owner.
- ii. A transfer to the Owner's estate following his or her death for the purpose of administering the estate and distributing the assets thereof during a limited period of time.
- iii. A transfer resulting from the death of an Owner when the transfer is to one or more lineal descendants or heirs of the deceased Owner.
- iv. A transfer by an Owner where the spouse or domestic partner of the Owner becomes the co-owner of the Affordable Unit.
- v. A transfer resulting from a decree of dissolution of the marriage or from a property settlement agreement incidental to such a decree by which a spouse of an Owner becomes the sole Owner of the Affordable Unit.
- vi. A transfer directly resulting from a termination of a registered domestic partnership by which a domestic partner of an Owner becomes the sole Owner of the Affordable Unit.

Any other beneficiaries, heirs, legatees or devisees of Owner, must be certified by AHFC to be Income-Qualified Persons in order to retain title to an Affordable Unit. Such other beneficiaries, heirs,

legatees or devisees who do not meet the requirements to be certified as an Income Qualified Person shall be required to transfer their interest in the applicable Affordable Unit within 180 days of their receipt of title to the Affordable Unit. Such transfer must be in accordance with Section 6 herein.

6. Transfer of Ownership through Sale or Exchange.

A. An Owner wishing to transfer the Affordable Unit must provide AHFC with written notice of its intent to sell ("Intent to Sell Notice") and comply with Subsections B., and C. of Section 6 of this Covenant.

B. AHFC's Purchase Right. If the Owner of the Affordable Unit delivers an Intent to Sell Notice to AHFC, then in such limited event, AHFC is hereby granted a Purchase Right to purchase the Affordable Unit. AHFC's Purchase Right must, if at all, be exercised by AHFC within forty-five (45) days after AHFC's receipt of said Intent to Sell Notice ("AHFC's Exercise Period"). If AHFC fails to timely exercise the Purchase Right by timely delivering to the Owner a Notice of Exercise of Right prior to the expiration of AHFC's Exercise Period, then AHFC's Purchase Right to purchase the Affordable Unit shall be deemed to be waived as to the applicable Intent to Sell Notice. If AHFC timely exercises the Purchase Right by timely delivering the Notice of Exercise of Right prior to the expiration of AHFC's Exercise Period, then AHFC is obligated to either (i) purchase the Affordable Unit, or (ii) assign the Purchase Right to an Eligible Buyer. Prior to the expiration of AHFC's Exercise Period, AHFC must either provide Owner a Notice of Exercise of Right or Notice of Waiver of Right. In the event that AHFC provides a Notice of Waiver of Right, or fails to deliver either a Notice of Exercise of Right or Notice of Waiver of Right prior to the expiration of AHFC's Exercise Period, the Owner may proceed with sale of the Affordable Unit, in the manner prescribed by Subsection C. of Section 6 of this Covenant. In the event AHFC provides a Notice of Exercise of Right, the sale of the Affordable Unit must close with either AHFC, or an Eligible Buyer who is AHFC's assignee, as stated in the Notice of Exercise of Right, within sixty (60) days of Owner's receipt of the Notice of Exercise of Right (the "AHFC's Closing Period"). In the event that the sale does not close prior to the expiration of AHFC's Closing Period, and such failure is not due to a default by the Owner, the Owner may terminate the contract with AHFC, or its assignee, and sell the Affordable Unit in accordance with the provisions of Subsection C. of Section 6 of this Covenant. In such event, AHFC shall provide Owner with such written confirmation or other documentation that may reasonably be necessary to satisfy a title insurer of Owner's compliance with this Section.

C. Good Faith Marketing and Selection Process. Provided an Owner: (i) has received a Notice of Waiver of Right from AHFC; or, (ii) AHFC has not timely exercised its Purchase Right prior to the expiration of AHFC's Exercise Period or, (iii) AHFC, or its assignee fails to timely close the purchase of the Affordable Unit prior to the expiration of AHFC's Closing Period, an Owner may market the Affordable Unit for sale in accordance with this Subsection. The purpose of this Subsection is to assure that an Owner engages in a good faith marketing effort such that members of the public have a fair chance to become informed of the availability of the Affordable Unit, which shall include marketing the Affordable Unit for a minimum of thirty (30) days before any contract for sale may be executed by the Owner. Upon the expiration of the mandatory Intent to Sell Notice and marketing period, the Owner may enter into a contract for sale of the Affordable Unit with a ready, willing and able buyer; provided such buyer has been certified by AHFC as an Eligible Buyer.

7. Affordable Sales Price of Affordable Unit

The Affordable Sales Price of the Affordable Unit to Declarant/Owner was in the amount of _____ ("Affordable Sales Price").

8. Affordable Resale Price Limit

A. For future Transfers of the Affordable Unit, the Affordable Unit may not be transferred for more than an amount calculated in accordance with this Section. The "Affordable Resale Price" is equal to the Affordable Sales Price, plus the Affordable Sales Price multiplied by a Fixed Rate of Appreciation at 2% annual, simple interest multiplied by the number of Ownership Years the Affordable Unit is owned by such Owner (the "Fixed Rate of Appreciation") with a cap of 30 years. Ownership Years are calculated on an annual, pro-rated basis to credit the Owner with that portion of the year that may not be a full calendar year. "Ownership Years" equals the total number of days of ownership divided by three hundred and sixty-five days, so that the Ownership Year is prorated daily. The amount of appreciation due to the Owner shall equal the Fixed Rate of Appreciation with a cap of 30 years.

B. Nothing in this Covenant represents or guarantees that the Affordable Unit will be re-sold at an amount equal to Affordable Resale Price. Depending upon conditions affecting the real estate market, an Affordable Unit may be re-sold for less than the Affordable Resale Price.

C. Adjustments to Affordable Resale Price. The Affordable Resale Price shall be increased or decreased, as applicable, by the following adjustment factors ("Adjustment").

- (i) Capital Improvements. Provided that prior to Owner's undertaking the Eligible Capital Improvement Owner obtains AHFC's written approval to proceed, the Affordable Resale Price shall be increased in an amount equal the original cost to Owner for making the Eligible Capital Improvement. To receive AHFC approval, Owner must submit evidence to AHFC showing the purpose and cost of the capital improvements. As Eligible Capital Improvements increase the Affordable Resale Price, they may also increase the value at which the Affordable Unit is taxed by the applicable taxing authority by the amount of the Eligible Capital Improvements. The Owner understands AHFC will provide notice of the amount spent on Eligible Capital Improvements to the applicable taxing authority.
- (ii) Damages. Affordable Resale Price shall be decreased by the amount necessary to repair damage to the Property, if any, and to place the Property into saleable condition as reasonably determined by AHFC, including, without limitation, amounts attributed to making necessary structural, mechanical, electrical and plumbing repairs that would require the issuance of a building permit; and repairing or replacing built-in appliances and fixtures; however, Damages shall not include reasonable wear and tear to items such as painted surfaces, drapery, flooring or carpeting or other normal and customary repairs for which a building permit from the City is not required.

9. AHFC's Right to Acquire Owner's Interest prior to foreclosure.

A. The Owner shall give to AHFC written notice within three (3) business days from the date any notice of foreclosure is provided to the Owner or any foreclosure is commenced against the Property under the First Deed of Trust, or other instrument encumbering an Affordable Unit.

B. If the Owner has not cured the default under the First Deed of Trust within ten (10) business days prior to a scheduled foreclosure sale by an Institutional Lender who is the beneficiary under the First Deed of Trust, then AHFC may (but shall not be obligated to) proceed to make any payment required in order to avoid foreclosure of an Affordable Unit. Upon making any such payment, AHFC shall succeed to all beneficial rights of the Owner to an Affordable Unit and shall assume all of the Owner's rights and obligations under the First Deed of Trust, subject to the terms of this Covenant. In such event, the Owner shall relinquish possession thereof to AHFC.

C. The Owner may reacquire or repurchase his or her interest in an Affordable Unit by payment to AHFC of all sums paid by AHFC in connection with the First Deed of Trust, or other instrument encumbering an Affordable Unit, and all other sums reasonably expended by AHFC in relation to its acquisition of the applicable Affordable Unit, plus two percent (2%), per annum, simple interest from each date of expenditure. This reacquisition or repurchase may only occur within twelve (12) months from the date AHFC expended money in connection with its acquisition of the Affordable Unit. As of the date of such reacquisition or repurchase, the Owner shall re-assume all of his or her rights and obligations under the First Deed of Trust. At the end of such twelve (12) month period, if the Owner's interest has not been so reacquired or repurchased, all right, title and interest of the Owner in the Affordable Unit shall be extinguished, and the Owner shall execute a quit claim deed to AHFC to evidence Transfer of title to AHFC. If the Owner fails or refuses to execute such a deed after being sent a written request therefor by AHFC, AHFC may execute it on behalf of the Owner as the Owner's attorney-in-fact. But prior to executing such a deed, AHFC shall pay to the Owner the down payment made by the Owner plus any reduction made by the Owner in the principal amount of the loan, plus the cost of any Eligible Capital Improvement, minus AHFC's costs to the date of execution of the deed.

D. Provided that AHFC declines to exercise its right to assume Owner's interest in the Affordable Unit, an Institutional Lender's foreclosure under a First Deed of Trust, shall terminate this Covenant as to the Affordable Unit, AHFC shall have no right to acquire the Affordable Unit after a foreclosure sale and the Institutional Lender shall have no obligation to account to, remit proceeds or otherwise deal with AHFC as a result of any foreclosure sale.

E. Notwithstanding the language of Subsection 9.D of this Covenant, if an Institutional Lender forecloses under a First Deed of Trust and the proceeds from such foreclosure sale exceed the amount the Institutional Lender would be entitled under the loan documents executed by the Owner in connection with a First Deed of Trust, then any such surplus shall be divided between Owner and AHFC as follows:

- The Owner shall receive such surplus proceeds in an amount that does not exceed the Affordable Resale Price, as calculated at the time of the foreclosure sale.
- AHFC shall receive all surplus proceeds that exceed the Affordable Resale Price, as calculated at the time of the foreclosure sale.

Declarant acknowledges that it would be contrary to the purposes of this Covenant if, in the event of a foreclosure, a sale generates proceeds in excess of the amount an Institutional Lender is legally entitled to and Owner receives more than the Affordable Resale Price. Therefore, Declarant hereby covenants the following: (i) there shall be an irrevocable assignment of certain surplus proceeds to AHFC, as prescribed in the above bullet points, and that the Owner, at the time of such foreclosure sale shall execute all documents reasonably necessary to effectuate the assignment and shall instruct Institutional Lender to distribute any such surplus in accordance with this Subsection; and, (ii) in the event that the amount of surplus proceeds for which AHFC is entitled is inadvertently paid to the Owner, Owner shall be obligated to pay such amount to AHFC promptly. It is not the intent of Declarant for the covenants set out in this Subsection to in any way impair Institutional Lender from its recovery of all outstanding principal and interest, penalties, attorney's fees, and other fees and penalties it may be lawfully entitled in prosecuting such foreclosure, and the effect of this Covenant is limited in scope to only such proceeds generated in surplus of that which Institutional Lender is legally entitled to recover.

10. Subordination of Covenant

The provisions of this Covenant shall be subordinate to the lien of a First Deed of Trust to secure a loan to purchase an Affordable Unit made by an Institutional Lender. This Covenant shall not impair the rights of such Institutional Lender, or such lender's assignee or successor in interest, to exercise its remedies under the First Deed of Trust in the event of default by Owner; these remedies include the right to foreclose or exercise a power of sale or to accept a deed in lieu of foreclosure.

11. Re-Financing of the First Deed of Trust or Financing Eligible Capital Improvements.

The Owner may not mortgage, refinance or in any other manner encumber any of its interest in an Affordable Unit without the prior written consent of AHFC, which shall be in AHFC's sole and absolute discretion, with the exception of a Senior Mortgage. If the Owner wishes to refinance its Senior Mortgage, or sell an Affordable Unit, the Owner must (a) give notice to AHFC, and (b) deliver to AHFC copies of every document to be recorded in connection with the refinancing or sale in advance of the closing. **THESE RESTRICTIONS PROHIBIT THE OWNER FROM GETTING ADDITIONAL LOANS THAT USE AN AFFORDABLE UNIT AS COLLATERAL, INCLUDING, WITHOUT LIMITATION, LOANS TO REPAY CREDIT CARD DEBT, LOANS TO PURCHASE AUTOMOBILES, HOME EQUITY LOANS, DEBT CONSOLIDATION LOANS OR LOANS TO FINANCE THE PURCHASE OF OTHER PERSONAL PROPERTY.** The Owner acknowledges and agrees that the requirements of this Section 11 are necessary to ensure the continued affordability of the Affordable Units to the Owner and to minimize the risk of loss of the Affordable Units through default and foreclosure. The Owner shall pay to AHFC, at AHFC's option, all fees, costs and expenses, including, without limitation, reasonable attorneys' fees, incurred by AHFC in connection with approving any mortgage or refinancing. Any lien purported to be granted by the Owner to any party that is done in violation of this Section 11 shall be absolutely void.

The Owner, with AHFC's prior written consent, may only re-finance the First Deed of Trust or finance Eligible Capital Improvements, so long as the total amount of such re-financing and/or financing of Eligible Capital Improvements does not exceed ninety-three percent (93%) of the Affordable Resale Price in effect at the time of the re-financing of the Affordable Unit. Such re-financing must be with an Institutional Lender.

12. Taxes, Assessments and Utilities

DECLARATION OF RESTRICTIVE COVENANT REGARDING AFFORDABLE HOUSING REQUIREMENTS

A. Taxes, Assessments and Utilities. The Owner shall pay, at their own expense, when due all taxes, governmental assessments and charges of every kind against the Affordable Unit. The Owner shall also pay, when due, all other service bills and utility charges that relate to the Affordable Unit, including, without limitation, all charges for water, sewer, heat, air conditioning, gas, light, garbage, electricity, telephone service, power, and all other public and private services and utilities

B. Homeowner's Right to Contest. The Owner may, in good faith and with reasonable diligence, contest the amount or validity of any taxes relating to the Affordable Unit if, during any such contest, the enforcement of the lien of such taxes is stayed.

C. Payments in Event of Delinquency. If the Owner fails to pay the taxes or other amounts specified in this Section 12 when due, the Owner will hold AHFC harmless from and against any liens arising out of any failure to pay the taxes or other amounts specified in this Section.

D. Proof of Compliance. Within thirty (30) business days after payment of taxes Owner shall provide evidence of payment to AHFC on an annual basis. Within ten (10) business days after payment of any liens arising out of the non-payment of taxes or utilities, the Owner shall provide evidence of payment to AHFC.

13. Maintenance of Property

The Owner shall, at the Owner's sole expense, maintain the Affordable Unit in good, safe, and habitable condition in all respects, except for normal wear and tear, and in full compliance with all applicable laws, ordinances, rules and regulations of any governmental authority with jurisdiction over matters concerning the condition of the Affordable Unit. The Owner shall not be required to obtain any permission from AHFC for normal and customary repairs and maintenance of the Affordable Unit; provided, however, the Owner is obligated to obtain any required building permits for Eligible Capital Improvements if such Eligible Capital Improvements are subject to the requirement to obtain building permits for same by applicable City building codes or ordinances.

14. Eligible Capital Improvements

Any post-purchase construction, excluding normal and customary repairs and maintenance, in about or to the Affordable Unit requiring issuance of a permit is subject to the following conditions: (a) such construction will not commence without the prior written consent of AHFC; (b) all costs shall be borne and paid for by the Owner; (b) all construction shall be performed in a good and workmanlike manner and shall comply with applicable laws.

15. Prohibited Liens

If any mechanic's, laborer's, materialman's or statutory lien is filed against the Affordable Unit, the Owner shall cause the lien to be discharged of record within sixty (60) calendar days thereafter by payment, deposit, bond, order of a court of competent jurisdiction or as otherwise permitted by law. If the Owner fails to cause such lien to be discharged within the 60-day period, then, in addition to any other right or remedy, AHFC shall not be obligated to pay any sums secured by the lien. The Owner agrees to

indemnify, defend and hold AHFC harmless from and against any liens arising out of any construction or other work on the Affordable Unit.

16. Use of Property as Owner's Primary Residence

A. Occupancy. At or before the time when title is transferred to the Affordable Unit, each new Owner shall certify to AHFC in writing his or her intent to occupy the Affordable Unit as his or her primary residence; and, the Owner must declare the Affordable Unit as the Owner's residential homestead, as provided in Texas Tax Code Chapter 11, as may be amended, revised or recodified. Except for leasing, allowed by this Section 16, Owner shall reside at the Affordable Unit at least nine of the twelve calendar months each year of Owner's possession of the Affordable Unit.

B. Leasing. An Owner may not lease the Affordable Unit except as provided in this Subsection 16.B.

- i. Requirements for all leases. Any lease of the Affordable Unit shall be approved by AHFC before it may become effective. AHFC shall approve the leasing of the Affordable Unit only if: (1) the Lease is in writing and conforms with Texas law; (2) the lease requires the tenant to maintain the Affordable Unit in good condition and prohibits subleasing; and (3) the rent for the Affordable Unit does not exceed Owner's monthly cost of principal and interest on the loan secured by the First Deed of Trust to an Institutional Lender, and property insurance, property taxes and condominium owners association assessments assessed against the Affordable Unit.
- ii. Requirements for leases that do not exceed a term of three months. Provided that Owner complies with the nine (9) month primary residency requirements, Owner may lease the Affordable Unit for a period that does not exceed three (3) months during a calendar year; provided further that Owner complies with the requirements for all leases, as stated in Sub-section 16.B.(i) above.
- iii. Leases greater than three (3) months. Except for Leases that do not exceed three (3) months during a calendar year, Owner shall not lease the Affordable Unit during the first five (5) years of ownership. Upon the fifth (5th) anniversary of Owner's ownership of the Affordable Unit, Owner may lease the Affordable Unit, provided that: (i) the lease term does not exceed twelve (12) months and is not renewable; (ii) no more than one (1) lease term occurs within a seven (7) year period of ownership; (iii) the Affordable Owner first provides AHFC with notice that the Affordable Unit is available for lease and obtains certification that such Affordable Unit has been inspected and is in compliance with all applicable statutory and regulatory housing requirements; and (iv) Owner complies with the requirements for all leases, as stated in Sub-section 16.B.(i) above. In the event that a maximum lease term of twelve (12) months presents a condition of economic hardship on the Affordable Owner because of military deployment, health problems or another reason causing the Affordable Owner to be required to leave the area temporarily, AHFC may grant a temporary waiver to the Affordable Owner not to exceed 24 months of the requirement to continuously occupy and reside in the Affordable Unit. Documentation substantiating the

economic hardship must be submitted in writing for AHFC to review. AHFC will provide the Affordable Owner with a response, in its sole discretion, within a reasonable time period.

17. Liability, Insurance, Damage Eminent Domain

A. Owner's Liability. The Owner assumes sole responsibility and liability to all persons and authorities related to its possession, occupancy and use of the Affordable Unit. AHFC or its successors shall not be liable to the Owner or any third party for any losses, costs, damages, harms, claims or lawsuits connected with the Affordable Unit.

B. Indemnification of AHFC. The Owner shall, and does hereby, indemnify, protect, defend and hold harmless AHFC, and AHFC's agents, employees, officers, successors, designees and assigns, from and against any and all claims, damages, liabilities, obligations, losses, causes of action, penalties, costs and expenses (including, without limitation, reasonable attorneys' fees and court costs) arising directly or indirectly from: (a) the Owner's use of the Affordable Unit, or any activity, work or other things done, permitted or suffered by the Owner in, on or about the Affordable Unit; (b) the Owner's breach of this Restrictive Covenant or violation of any applicable Laws; (c) any act or omission of the Owner, or any guest or invitee of the Owner, or anyone claiming by, through or under the Owner; or (d) any cause in, on or about the Affordable Unit. The Owner hereby assumes all risk of damage to property or injury to persons in, on or about the Affordable Unit, from any cause, and the Owner hereby waives all claims in respect thereof against AHFC, and AHFC's respective agents, employees, officers, successors, designees and assigns.

18. Insurance.

The Owner shall, at the Owner's sole expense, keep the interior of the Affordable Unit (i.e., interior walls, flooring, carpeting, appliances, built-in cabinets, shelves, and any other installations or additions which are the Owner's insurance responsibility under the condominium documents) continuously insured against loss or damage by fire and the extended coverage hazards for its full replacement value. The Owner shall keep the Affordable Unit continuously insured throughout the Covenant Term in such amounts and against such risks and liabilities as the Senior Lender requires, or, if there is no Senior Lender, in such amounts and against such risks and liabilities as AHFC may reasonably require, provided that such insurance shall specifically insure the Owner against all liability assumed under this Covenant and imposed by law. All insurance policies shall name AHFC as additional insureds, and shall also contain endorsements providing that they shall not be canceled, reduced in amount of coverage or otherwise modified in any material respect, without prior written notice to AHFC of at least thirty (30) days. At AHFC's request, the Owner shall provide copies of all policies and renewals of policies or other evidence of insurance. The Owner shall pay the insurance premiums as they become due, and shall comply with all insurance requirements at any time in force; provided, however, the Owner's compliance, in whole or in part, with this Section shall not be deemed to limit, in any way or to any extent, the liabilities or obligations of the Owner to AHFC under the terms of this Covenant. Notwithstanding anything herein to the contrary, Owner shall be deemed to have satisfied its obligation to make the insurance payments required by this Section and tax payments required by Section 12 so long as it is making such payments through an escrow established by the Senior Lender for such purposes, in which case the Owner shall provide AHFC copies of any annual escrow accounting provided to the Owner by the Senior Lender promptly upon AHFC's written request.

19. Damage and Destruction.

A. Obligation to Restore. Except as provided in Subsection (b) below, if the Affordable Unit is damaged by fire or any other cause, the Owner shall immediately give written notice to AHFC, and the Owner shall promptly repair or restore the Affordable Unit, as nearly as practicable, to its condition immediately prior to the damage and this Restrictive Covenant shall remain in full force and effect. The Owner shall also promptly and with due diligence take all steps necessary to ensure that the Affordable Unit does not constitute a danger to people or property.

B. Termination of Restrictive Covenant and Distribution of Insurance Proceeds. If repair or restoration is not economically feasible, or is otherwise prohibited under the Institutional Lender, or the Condominium Instruments, then the Owner may terminate this Covenant by delivering written notice to AHFC within sixty (60) calendar days after the date of the damage. Subject to the terms of the Institutional Lender any insurance proceeds shall be applied in the order provided for in Section 9.E, with the Affordable Resale Price determined as of the date immediately before the damage in accordance with Section 8.A.

20. Eminent Domain.

A. Obligation to Restore. Except as provided in (B) immediately below, in the event of any taking under the power of eminent domain, or conveyance in lieu of condemnation, the Owner shall promptly apply the proceeds of any such taking to the repair or restoration of the Affordable Unit, as nearly as practicable, to its condition immediately prior to the taking and this Covenant shall remain in full force and effect.

B. Termination of Restrictive Covenant and Distribution of Condemnation Award. In the event of a total taking (or partial taking, if repair or restoration is not economically feasible or is otherwise prohibited under the Institutional Lender or the Condominium Instruments), this Covenant shall terminate as of the date the Owner is required to give up possession of the Affordable Unit. Subject to the terms of the Institutional Lender, any condemnation award shall be applied in the order provided for in Section 9.E, with the Affordable Resale Price determined as of the date immediately before the taking in accordance with Section 8.A.

21. Enforcement of this Covenant

- A. The Grantor and each Owner hereby grant and assign AHFC the right to enforce compliance with this Covenant.
- B. Monitoring may be conducted by AHFC. Monitoring may take the form of a desk review and consist of the following:
 - 1. Review of property records to determine if property taxes are current;
 - 2. Review of appraisal district records to review chain of title for transfers of ownership and name and/or address inconsistencies;
 - 3. Review of City utility records to verify occupancy and name inconsistencies;
 - 4. Review Bureau of Vital Statistics to verify death.

- C. Compliance may be enforced by AHFC by any lawful means, including without limitation specific performance.
 - D. If AHFC is required to pursue legal action to enforce this Covenant, then in such event, AHFC shall be entitled to an award of reasonable and necessary attorney's fees and other reasonable and necessary costs incurred in the enforcement of this Covenant.
 - E. Venue for a suit enforcing compliance shall be proper in Travis County, Texas.
22. Transfer for value exceeding the Affordable Sales Price. If ownership of the Affordable Unit is transferred for any reason for consideration exceeding the Affordable Sales Price, including but not limited to, foreclosure or deed-in-lieu of foreclosure, the appropriate taxing authority may raise the taxable value of the property to the market rate, and the Affordable Unit may no longer receive taxation benefits of the restricted Affordable Sales Price.
23. Miscellaneous
- A. This Covenant shall run with the Affordable Unit. It shall bind during its term, and the benefit hereof shall inure during its term to the Owner, his or her heirs, legal representatives, executors, successors in interest and assignees, and to AHFC, its successors, designees, or assignees.
 - B. The Affordable Unit may not be used by any other development to satisfy the requirements of this Covenant or any other off-site affordable housing obligations.
 - C. The Affordable Unit is held and hereafter shall be held, conveyed, encumbered (except to the First Deed of Trust), leased, rented, and occupied subject to these covenants, conditions, restrictions and limitations. All of the herein-stated covenants, conditions, restrictions and limitations are intended to constitute both equitable servitudes and covenants running with the land.
 - D. Any buyer or transferee of the Affordable Unit or of any portion of or interest in the Affordable Unit, by acceptance of a deed therefor, or by the signing of a contract or agreement to purchase the same, shall, by acceptance of such deed or by the signing of such contract or agreement, be deemed to have consented to and accepted the covenants, conditions, restrictions and limitations set forth herein.
 - E. Notices to AHFC shall be given in writing and delivered in person or mailed, by certified or registered mail, return receipt requested, to the party at the address set forth below, or such other address designated by AHFC by like notice:

Austin Housing Finance Corporation
Attn: OHDA Program Manager
1000 East 11th Street, Ste 200
Austin, Texas 78702
- Notices to the Owner may be given in like manner addressed to the Owner of the Affordable Unit as shown on the City's tax rolls.

F. If any provision of this Covenant shall be held by a court of proper jurisdiction to be invalid, illegal or unenforceable, the remaining provisions shall survive and their validity, legality or unenforceability shall not in any way be affected or impaired thereby.

G. The captions of the Sections in this Covenant are for convenience only and shall not be used to interpret the meaning of any provision hereof.

H. The conditions of this Covenant shall be interpreted so as to avoid speculation on the Affordable Unit and to insure to the greatest extent possible that its purchase price and mortgage payments remain affordable during the Covenant Term to persons and families of low or moderate income.

I. This Covenant shall not be revised, amended, repealed or otherwise modified without the written approval of AHFC and the Owner of the Affordable Unit; and any such modification must be recorded in the Official Records of Travis County before becoming effective.

J. This Covenant shall apply to the Affordable Unit in addition to the terms and conditions of the Condominium Declaration that is applicable to the Condominium Project in which the Affordable Unit is located. The terms of this Covenant shall apply in addition to and in conjunction with the Condominium Declaration, and no provision of the Condominium Declaration shall in any way be impaired by this Covenant. Any amendment to said Condominium Declaration that attempts to repeal, amend, or modify this Covenant shall be void and without effect.

K. Whenever reasonable interpretation of the context of this Agreement requires, the use of the singular of any word shall be deemed to include the plural and vice versa.

(remainder of page intentionally left blank; signature pages follow)

IN WITNESS WHEREOF, Grantor has executed this Covenant as of the date first stated above.

GRANTOR:

By: _____

Name: _____

(Acknowledgment)

STATE OF TEXAS

§

§

COUNTY OF TRAVIS

§

This instrument was acknowledged before me on _____, 2019, by
_____.

~~Not a~~ Public, State or Texas



City of Austin, Neighborhood Housing and Community Development Office
P.O. Box 1088, Austin, Texas 78767
(512) 974-3100 Fax (512) 974-3161 <http://www.austintexas.gov/department/housing>

2018 Area Median Family Income
For Travis County, Texas
\$86,000 (4-person household)
MSA: Austin – Round Rock, TX.

**2018 HOME & CDBG Program Income Limits
by Household Size Effective Date: June 1, 2018**

Median Income Limit	1 Person Household	2 Person Household	3 Person Household	4 Person Household	5 Person Household	6 Person Household	7 Person Household	8 Person Household
20%	12,050	13,750	15,500	17,200	18,600	19,950	21,350	22,700
* 30%	18,100	20,650	23,250	25,800	27,900	29,950	32,000	34,100
<i>(30% MFI is defined by HUD as extremely low-income)</i>								
40%	24,100	27,500	30,950	34,400	37,150	39,900	42,650	45,400
* 50%	30,100	34,400	38,700	43,000	46,450	49,900	53,350	56,800
<i>(50% MFI is defined by HUD as very low income)</i>								
* 60%	36,120	41,280	46,440	51,600	55,740	59,880	64,020	68,160
65%	39,150	44,700	50,300	55,900	60,350	64,850	69,300	73,800
70%	42,150	48,150	54,200	60,200	65,000	69,850	74,650	79,450
* 80%	48,200	55,050	61,950	68,800	74,350	79,850	85,350	90,850
<i>(80% MFI is defined by HUD as low-income)</i>								
100%	60,200	68,800	77,400	86,000	92,900	99,750	106,650	113,500
120%	72,250	82,550	92,900	103,200	111,450	119,700	127,950	136,200
140%	84,300	96,300	108,350	120,400	130,050	139,650	149,300	158,950

* Income limits provided by HUD.

Other income limits calculated by NHCD based on the formula used by HUD.

MFI Chart was expanded to include other percentages used by NHCD.

EXHIBIT 1

HOMEOWNER'S ACKNOWLEDGMENT OF AFFORDABILITY RESTRICTIONS

TO: AUSTIN HOUSING FINANCE CORPORATION ("AHFC")

DATE: _____, 20__

I am giving this letter to AHFC of Austin to be made an exhibit to a Resale Restriction Agreement and Covenant Limitations on Resale Price and Buyer Income ("Restrictive Covenant") between AHFC and me. I am buying the condominium unit located at 300 East Croslin St., Unit #_____, Austin, TX 78752, which will be subject to the Restrictive Covenant.

I understand how the terms and conditions of the Restrictive Covenant affect my rights as a homeowner, now and in the future. In particular, I understand and agree that:

- Long-Term Affordability. The purpose of the Restrictive Covenant is to keep housing affordable for future generations of low- and moderate-income households. I support this goal.
- Resale Restrictions. AHFC controls the resale of my home. If I want to sell my home, I must sell it to another income-eligible buyer (or to AHFC) for a restricted resale price determined in accordance with the resale formula in the Restrictive Covenant. If I violate the resale restrictions, the Restrictive Covenant gives AHFC the right, among other remedies, to sue for damages or terminate the Restrictive Covenant and recover any sale proceeds. I realize this limits my ability to resell my home (a "restraint on alienation"), but I agree that this limitation is reasonable under the circumstances set forth in the Restrictive Covenant.
- Refinancing Restrictions. The Restrictive Covenant may keep me from obtaining a home equity loan, debt consolidation loan, car loan or a similar loan that would use the home as collateral. I acknowledge that this constitutes a restraint on alienation, but likewise agree that it is a reasonable restraint under the circumstances of the Restrictive Covenant.
- Principal Residence. I must occupy and use my home as a principal residence. I may only lease it under the provisions under the Restrictive Covenant, and if I move out, I must sell it. I cannot continue to own the home as an absentee owner.

I will honor the terms of the Restrictive Covenant. I consider these terms fair to me and others.

By: _____

{Insert Name of Homeowner}



ATTACHMENT 3

Income Eligibility Requirement Packet & Applicant Affidavit

Applicants must meet income eligibility requirements. An applicant's gross annual income may not exceed 80% of HUD's median family income for the City of Austin, as adjusted for the household size.

The Austin Housing Finance Corporation (AHFC) will calculate annual gross income in accordance with 24 CFR Part 5. The Part 5 income calculation takes into account gross income and assets.

Applicants must complete the Income Eligibility Questionnaire (page 2) and attach all supporting documentation as indicated in the Income Eligibility Documentation Requirements Checklist (page 3). Applicants must also complete the Applicant Affidavit (pages 4 and 5).

Income Eligibility Requirements as of June 1, 2018:

Household Size	Maximum Household Income
1 Person	\$48,200
2	\$55,050
3	\$61,950
4	\$68,800
5	\$74,350
6	\$79,850
7	\$85,350
8	\$90,850

* Income amounts are 80% of Median Family Income for the City of Austin.



PROGRAM GUIDELINES

Ownership Housing Development Assistance Program (OHDA)

City of Austin

Austin Housing Finance Corporation

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I. PURPOSE

The purpose of the Ownership Housing Development Assistance (OHDA) Program (the "Program") is to implement the Austin Strategic Housing Blueprint, a multifaceted, integrated approach to creating and preserving affordable housing. Subject to the requirements and limitations of the sources of program funding, OHDA provides financing for the acquisition, rehabilitation, or new construction of affordable rental housing projects. Financing is provided to both for-profit and non-profit developers, including CHDOs.

The OHDA Program Guidelines includes a scoring criteria based upon multiple documents which serve to implement the Austin Strategic Housing Blueprint. These documents include:

Imagine Austin Comprehensive Plan

2016 Mobility Bond Corridor Construction Program

2018 Affordable Housing Bond Implementation Plan

Capital Metro Project Connect Long Range Vision Plan

Austin Strategic Housing Blueprint Implementation Plan

This document outlines the framework of guidelines within which the OHDA program operations are carried out. OHDA Program Guidelines undergo an annual review with any necessary revisions made prior to the next application deadline; however, additional revisions can be initiated by the AHFC Treasurer/NHCD Director at any time. OHDA Program Guidelines are not intended to address every circumstance that may be encountered in the development process, nor are they intended to be a verbatim restatement of all regulatory requirements. Omission of any federal or local regulatory requirements in these OHDA Program Guidelines does not relieve AHFC/NHCD, or the recipient of OHDA Program funds from their respective obligations as may be required by the funding source involved. OHDA Program guideline changes required as the result of federal, state or local regulatory or legal requirements may be implemented immediately by the AHFC Treasurer/ NHCD Director. .

The Austin Housing Finance Corporation (AHFC) reserves the right to fund projects at a lower amount than requested, and the right to deny applications that do not coincide with the City's Action Plan goals and the Strategic Housing Blueprint.

II. DEFINITIONS

Accessible	Individual dwelling unit, facility or a portion of a facility, when designed and constructed, can be approached, entered and/or used by individuals with physical disabilities.
Adaptable	Certain elements of a dwelling unit or facility can be added to, raised, lowered or altered to accommodate the needs of individuals with disabilities, or to accommodate the needs of persons with different types or degrees of disability.

Affordable Rent/ Eligible Rent	<p>Rent plus utilities paid by the tenant does not exceed rent limits according to household and unit size for properties developed with the following fund sources:</p> <ul style="list-style-type: none"> • For projects utilizing HOME and CDBG grant funds, or local non-federal sources, such as Housing Trust Fund or General Obligation Bond Funding, the HOME Program Rent Limits, published by HUD for the Austin-Round Rock-San Marcos, TX Metropolitan Statistical Area (MSA) will be used. • For projects financed with Low Income Housing Tax Credits (LIHTC) and/or Multi-family Private Activity Bonds (PAB), the Rent Limits published by the Texas Department of Housing and Community Affairs (TDHCA) for the Austin-Round Rock-San Marcos, TX Metropolitan Statistical Area (MSA) will be used. • If a combination of federal grant and/or local fund sources is used with LIHTC and/or PAB financing, AND if there is a difference between HOME and TDHCA rent limits, the more restrictive rent limits (i.e., lower dollar amounts for rents according to bedroom counts) will be used in order to ensure that the rent limits do not exceed those of the more restrictive funding source. If there is no difference between HOME and TDHCA rent limits, the HOME rent limits will be used.
AHFC	Austin Housing Finance Corporation, a Texas, public non-profit corporation organized and operated under Chapter 394, Texas Local Government Code.
CHDOs	“Community Housing Development Organizations” means a type of non-profit, community-based service organization that has, as part of its mission, the development of affordable housing for low- to moderate-income households. The U. S. Department of Housing and Urban Development (HUD) requires that the organization meet certain requirements pertaining to its legal status, organizational structure, and relationship to other entities, capacity and experience. Further definition can be found at 24 CFR 92.300
Debt Coverage Ratio	Ratio of net operating income (NOI) to total debt service (DS) during a given time period ($DCR = NOI \div DS$). Developments where financing is structured so as not to have debt on the property will not have a debt coverage ratio that can be calculated.
Economic Feasibility	“Economic Feasibility” for a for-profit developer is defined as a project’s ability to generate a minimum 10% return on equity to the investor(s) after all expenses and debt service have been paid; and “Economic Feasibility” for a non-profit organization is defined as a project in which projected returns are sufficient to reimburse actual expenses.
Eligible Costs	Project costs that can be paid with OHDA Program funds. Eligible costs include, but are not limited to, the costs or partial costs of acquisition and/or verifiable hard construction costs, reasonable soft costs, architectural and engineering fees, surveys, market studies and legal fees.
Eligible Household	A household with a yearly income at or below 50% of the median family income (MFI) as published by HUD for the HOME Program or by TDHCA, as applicable to the source(s) of funding, for the Austin-Round Rock-San Marcos, TX MSA.

Geographic Dispersion	Locations or areas that provide greater opportunity for families in terms of education, economic, mobility, transportation, healthy food access and neighborhood quality
Low to Moderate Income Household	A household whose gross income does not exceed 80% of the median family income (MFI) according to household size as defined by 24 CFR 570.
Median Family Income	“Median Family Income (MFI)” means, for a given locality, the dollar amount separating ½ of the households with higher incomes from ½ of the households with lower incomes. In other words, at the median income level, there is an equal amount of households earning more than the median income and an equal number earning less the median income. The median income is adjusted based on the number of persons in a household.
Net Operating Income	Rent revenues or other income generated by the property(ies) with the exception of any project proceeds resulting from the long-term lease or sale of the property(ies).
NOFA	Notice Of Funding Availability. A NOFA refers to a process that informs the public that funding is available for a specific purpose and can be requested through an application process.
Non-profit organization	A not-for-profit non-sectarian organization that is certified by the Internal Revenue Service (IRS) as either a 501(c)(3) or a 501(c)(4) entity established for the purpose of benefiting low- and moderate-income individuals.
Organization in good standing	An organization that has no open Land Use Code violations, Regulatory Agreement violations, restrictive covenant violations, or other regulatory violations; and is not the subject of pending legal action brought by any jurisdiction or non-profit group. Entities will also be assessed adherence to cost estimates and construction schedules.
Program Income	Gross income received by the grantee (City of Austin) or sub grantee (Austin Housing Finance Corporation) directly generated by a grant-supported activity, or earned only as a result of the grant agreement during the grant period. To be considered program income, the grantee or a sub grantee must receive the income.
Project Proceeds	Proceeds resulting from sale of the property
Special Needs	People with disabilities, survivors of domestic abuse, homeless, and other vulnerable population categories as may be identified from time to time.
Very Low Income Household	A household whose gross income is at or below 50% of the MFI according to family size as published by HUD for the HOME Program or by TDHCA, as applicable to the source(s) of funding.

III. TERMS OF FINANCING

A. Funding Sources

The program is funded by federal funding sources such as HOME (Home Investment Partnership Program) and CDBG (Community Development Block Grant) and local funding sources such as General Obligation Bonds, the Housing Trust Fund, and other targeted local funds.

The authorizing statute of the CDBG program requires that each activity funded, except for program administration and planning activities, must meet one of three national objectives. The three national objectives are:

1. Benefit to low-and moderate-income (LMI) persons;
2. Aid in the prevention or elimination of slums or blight; and
3. Meet a need having a particular urgency (referred to as urgent need)

The resources found at this link [CDBG Regulations](#) provide information on allowable housing activities, property improvements environmental review, fair housing, accessibility, labor standards and other areas.

HOME funds are allocated to participating jurisdictions using a formula designed to reflect relative housing need. All housing developed using HOME funds must serve low and very low income families. Each year, HUD publishes the applicable HOME income limits by area adjusted for family size. The resources found at this link [HOME Regulations](#) provide information on eligible project costs, property standards, income targeting for homeownership and rental units.

The [HOME-CDBG Guidebook](#) provides information on applicable regulations for projects funded with both CDBG and HOME funds.

B. Loans

Assistance through the OHDA Program is provided primarily through loans made to the Applicant/Borrower. All loans are secured by a Deed of Trust or other acceptable collateral. Assistance generally will be non-recourse with recovery rights limited to the encumbered collateral and any income therefrom. Applications will be reviewed and underwritten and recommendations will be made as to eligibility, fund source, loan amount and associated terms and conditions on a case-by-case basis. Under no circumstances shall financing be used for any reason or cost other than for direct costs associated with and approved by the program.

At its sole discretion, AHFC may consider renegotiation of loan terms and conditions if by doing so increases the creation of the number of affordable home ownership opportunities, and/or achieves a more favorable interest rate on any superior loan. Under no circumstances will the Program consider a request to renegotiate loan terms and conditions if equity is anticipated to be taken from the project that will not be used directly in the project itself or places AHFC in a lesser lien position without resulting in a reasonable and direct affordable housing benefit.

1. **Amortized Loans:** The loan is fully-amortizing and requires repayment over terms up to forty (40) years or more at interest rates ranging from 0% per annum to rates that will typically be lower than market lending rates in effect at the time the loan is made, plus allowable fees.

Interest rates and terms on OHDA loans are determined by cash flow projections for projects and can be negotiated within the parameters of OHDA underwriting criteria.

2. **Deferred Payment Loans:** Subject to OHDA restrictions, Deferred Payment Loans (DPLs) are provided at interest rates ranging from 0% per annum to rates that will typically be lower than market lending rates in effect at the time the loan is made, plus allowable fees. The loan term may vary based on the funding source(s) used for the project, but will be for a period of forty (40) years and maybe up to ninety-nine (99) years or more. DPLs are contingent upon compliance with the terms and conditions of the loan agreement and deed restrictions for the required period. Should the property cease to be used as affordable housing during the loan term (or Affordability Period) as required under the Loan Agreement, the Note will remain in place until the sale, refinance, or other disposition of the property, at which time the principal, fees and any accrued interest will be due and payable.
3. **Deferred Forgivable Loans:** Subject to OHDA restrictions, Deferred Forgivable Loans (DFLs) are provided at 0% per annum interest rates and, as the name suggests, are forgiven at the termination of the loan term (Affordability Period). The loan term may vary based on the funding source(s) used for the project, but will be for a period of forty (40) years and maybe up to ninety-nine (99) years or more. DFLs are contingent upon compliance with the terms and conditions of the loan agreement and deed restrictions for the required period. Should the property cease to be used as affordable housing during the loan term (or Affordability Period) as required under the Loan Agreement, the Note will remain in place until the sale, refinance, or other disposition of the property, at which time the principal and any fees will be due and payable.
4. **Interest Only Deferred Payment Loans:** Subject to OHDA restrictions, Interest Only Deferred Payment Loans (IDPLs) are provided at interest rates ranging from 0% per annum to rates that will typically be lower than market lending rates in effect at the time the loan is made, plus allowable fees. These loans are structured such only interest payments are made periodically and the principal amount is repaid at the end as a balloon payment. The loan term may vary based on the funding source(s) used for the project, but will be for a period of forty (40) years and maybe up to ninety-nine (99) years or more. IDPLs are contingent upon compliance with the terms and conditions of the loan agreement and deed restrictions for the required period. Should the property cease to be used as affordable housing during the loan term (or Affordability Period) as required under the Loan Agreement, the Note will remain in place until the sale, refinance, or other disposition of the property, at which time the principal, fees and any accrued interest will be due and payable.
5. **Interest Only Deferred Forgivable Loans:** Subject to OHDA restrictions, Interest Only Deferred Forgivable Loans (IDFLs) are provided at 0% per annum interest rates and, as the name suggests, the principal amount is forgiven at the termination of the loan term (Affordability Period). The loan term may vary based on the funding source(s) used for the project, but will be for a period of forty (40) years and maybe up to ninety-nine (99) years or more. DFLs are contingent upon co but interest is paid periodically, in compliance with the terms and conditions of the loan agreement and deed restrictions for the required period. Should the property cease to be used as affordable housing during the loan term (or Affordability Period) as required under the Loan Agreement, the Note will remain in place

until the sale, refinance, or other disposition of the property, at which time the principal and any fees will be due and payable.

C. Liens

AHFC shall place a lien on the property for which a loan has been made. With very few exceptions, AHFC will agree to subordinate its lien position through the use of a Subordination Agreement executed by the Borrower, the Senior Lender/Lienholder, and AHFC. The lien shall remain in effect until all loan terms and conditions have been fulfilled. A release of lien will be issued upon full repayment of the loan and/or fulfillment of all contractual terms. A release of Lien shall not be provided in the event the borrower/developer fails to comply with the terms and conditions of the Loan Agreement.

In the case of a multi-property project or subdivision, the lien will be partially released as each home is sold to an Eligible Household and, if required, after repayment to AHFC is made for the release amount of the property as described in the Loan Documents.

D. Land Use Restrictions

AHFC shall require all residential developments assisted through the OHDA program to execute a Restrictive Covenant or other form of land use restriction to secure the affordability period with AHFC. At the time of the sale of an affordable ownership unit, the AHFC approved qualified buyer must enter into a Resale Restriction Agreement and a Covenant Limitation on Resale Price and Buyer Income or other form of land use restriction. These resale agreements ensure that if the buyer chooses to sell the unit in the future, the unit will be sold at an affordable price to another qualified buyer (who is income certified by AHFC). AHFC may also exercise a Right of First Refusal to purchase the property.

E. Collateral

Any assistance provided will be secured by a Deed of Trust or other acceptable collateral. The AHFC Deed of Trust may be subordinated to private or other financing only if determined necessary for project implementation. Assistance generally will be non-recourse with recovery rights limited to the encumbered collateral and any income there from.

F. Renegotiation of Loan Terms

At its sole discretion, the AHFC may consider renegotiation of loan terms and conditions if by doing so increases the creation of the number of affordable ownership housing units, and/or achieves a more favorable interest rate on any superior loan. Under no circumstances will the Program consider a request to renegotiate loan terms and conditions, if to do so takes equity from the project that will not be used directly in the project itself or places the Program in a lesser lien position without resulting in a reasonable and direct affordable housing benefit. The Program is under no obligation to consider any request to renegotiate any existing loan terms and conditions. It is the intent of the Program that all approved terms and conditions will be honored and met by the project and its owners. It is the policy of the Program that only under certain limited circumstances or situations will any such request be considered. At its sole discretion, the Program may consider renegotiation of loan terms and conditions if by doing so increases the creation of the number of affordable housing units.

IV. PROJECT ELIGIBILITY REQUIREMENTS

A. Eligible Projects

Eligible projects may include acquisition, rehabilitation, or construction projects for the development of affordable home ownership opportunities. For rehabilitation projects, funds may be used to make essential repairs or improvements to meet local code or federal Uniform Physical Condition Standards (UPCS); come into compliance with federal requirements of Section 504 or the Americans with Disabilities Act; abatement of lead-based paint or abatement of asbestos; essential energy-related repairs or improvements; and repair or replacement of major housing systems in danger of failure. Projects assisted must be operated and maintained on a long-term basis in accordance with these program guidelines and contractual requirements based on applicable federal and local regulations.

AHFC also issues Private Activity Bonds and these are typically used in conjunction with non-competitive Low Income Housing Tax Credits awarded by the Texas Department of Housing and Community Affairs. OHDA funding requests that propose to use a bond issuer other than AHFC are not allowed unless expressly approved by AHFC.

B. Minimum Requirements for Projects

1. Located within the corporate City-limits of Austin.
2. Projects must consist of one (1) or more residential units.
3. Units must be used for residential purposes only.
4. New construction projects must be certified for and meet the City of Austin's S.M.A.R.T. Housing requirements.
5. Rehabilitation projects must have a minimum of one (1) condition that violates either the City's Housing Code or federal Uniform Physical Condition Standards (UPCS).
6. All organizations, both for-profit and non-profit, that are parties to the development, whether owner, developer, or sponsor, must be in good standing, as defined herein, with AHFC/NHCD and other local governments as applicable. Good standing refers to an organization having no open Land Use Code violations, Regulatory Agreement violations, restrictive covenant violations, or other regulatory violations; and is not the subject of pending legal action brought by any jurisdiction or non-profit group. Entities will also be assessed with regard to any tenant complaints and adherence to cost estimates and construction schedules.
7. If applicable, projects must meet HUD Environmental Review requirements.

C. Acquisition, Rehabilitation, and New Construction

At least 10% of all units in the project must be designated as OHDA assisted and OHDA assistance for the designated units is limited to no more than 50% of per unit cost.

1. **Acquisition of land** Acquisitions must include existing units or vacant land that will facilitate the new construction of units. Assistance can be provided for the acquisition of land or existing residential properties, only if the acquisition price is equal to or less than the fair market value of the property.

2. **Acquisition of property** Funds may be used to make repairs or improvements to the property such that the property will:
 - a. meet local code or federal Uniform Physical Condition Standards (UPCS);
 - b. come into compliance with federal requirements of Section 504 of the Rehabilitation Act of 1974, as amended,
 - c. comply with the Americans with Disabilities Act,
 - d. have been treated for identified lead-based paint hazards in properties constructed prior to 1978;
 - e. have proof that asbestos has been handled appropriately;
 - f. have energy-saving repairs or improvements made and major housing systems repaired or replaced.
3. **New construction** Cost per unit must be reasonable and compatible with prevailing rate for affordable housing.

D. Eligible Costs

Through the Program, applicants may receive financing for acquisition, rehabilitation or new construction of owner-occupied housing projects. The successful applicant will be required to provide an accounting of expenditures made with funds on such periodic basis, as shall be determined by AHFC/NHCD to ensure that the expenditures are made in satisfaction of public purposes. OHDA funding may be used for the following as long as it is specifically related to the project:

1. **Hard Costs** such as acquisition of undeveloped land for a specific project; acquisition of existing structures; site preparations or improvement including demolition; securing buildings; construction; and materials and labor.
2. **Soft Costs** include predevelopment costs such as architectural and engineering fees (including specification and job progress inspections), financing costs, credit reports, title insurance, recording costs, transaction taxes, appraisals, environmental reviews, builders' or developers' fees, marketing costs, and management fees.
3. **Developer Fee** is compensation to the developer for the time and risk involved to develop the project. It is typically based on the size of the project, the total development cost and the risk associated with the project. The maximum developer fee allowed by AHFC/NHCD is 15% of total project costs. AHFC/NHCD may require a lower percentage for the developer fee if the developer also holds an ownership stake in the project or stands to profit from managing the property. Project Management fees (i.e., those paid out on a monthly basis while the project is underway) are considered a part of the Developer Fee.

E. Ineligible Costs

1. Facilities considered to be homeless shelters are not eligible.

2. Luxury items, including but not limited to wet bars; barbecue pits; bathhouses; hot tubs or Jacuzzis; swimming pools or swimming pool decks; will be found ineligible, and AHFC/NHCD reserves the right to disallow other project costs deemed non-essential to furthering the purpose of the project.
3. The OHDA program will not reimburse for any sales taxes paid on materials or labor.

V. APPLICATION REVIEW PROCESS

Program assistance is made available through the review and evaluation of information outlined in the OHDA Application. Projects are evaluated according to the application evaluation criteria and established AHFC/NHCD procurement policies and procedures in place at the time of application. Subject to available funds, projects determined to be the most responsive to Austin City Council policy directives, the current fiscal year's City of Austin Action Plan submitted to U.S. Department of Housing and Development, and which achieve the goals and initiatives detailed in the Austin Strategic Housing Blueprint may be selected and approved to receive assistance.

AHFC/NHCD reserves the right to determine project eligibility and the fund source to be used for any proposed project. Funding decisions will be based on a variety of factors, not just application scores.

A. Application Submittal

Applications for funding will be received on a continuous basis. Upon receipt of an application, staff will send a letter to the applicant acknowledging receipt and informing the applicant of the projected process dates. On a quarterly basis, all applications received prior to the quarterly deadline will be processed and reviewed for completion and to ensure that the proposal achieves the threshold score. In the event that an application is incomplete or does not meet the threshold score, staff will coordinate with the applicant to resolve any deficiencies. Within two weeks of the quarterly deadline, all complete applications that achieve the threshold score will be posted to the City website. Staff will send all applicants a letter informing them of the status of their application, either that it has been posted and will proceed through the review process or that it will not proceed through the process and may be resubmitted for a future review once deficiencies are resolved.

B. Application Components The complete application is comprised of five components plus all required attachments.

1. Applicant Information Form
2. Project Summary Form
3. Development Schedule
4. Development Cost Schedule
5. Operating Pro Forma

C. Required Attachments: The applicant is required to submit the following attachments to the application for the purpose of evaluating each development proposal. The attachments are grouped under four major categories – Applicant Entity, Development Team, Project Proposal and Property.

1. APPLICANT ENTITY

- a. **Introduction :** Brief description of the applicant entity and any relevant experience
- b. **Certificate of Status :** Issued by the Texas Secretary of State certifying that the applicant has filed for registration and is in existence as an entity in good standing within the State of Texas
- c. **Applicant Capacity Curriculum Vitae (CV)** for all principals of the applicant entity highlighting relevant experience in the development of affordable housing noting the following elements:
 - i. project management,
 - ii. market analysis,
 - iii. site selection and control,
 - iv. planning and construction,
 - v. design, architecture and engineering,
 - vi. legal and accounting,
 - vii. federal funding rules and
 - viii. Other funding source rules (e.g. Low Income Housing Tax Credits).
- d. **Statement of Confidence:** If the CV of any principal of the applicant team includes any development outside the territorial boundaries of the City of Austin, an endorsement of the applicant entity or principal member issued by the appropriate department of the jurisdictional government, must include:
 - i. The total number of units provided by the identified development and the number of units at each level of affordability
 - ii. References to the timeliness of the project and if the schedule adhered to the proposed timeline
 - iii. References to the cost estimate of the project, the public investment in the project, and the number of times the applicant requested funds for the project
- e. **Financial Capacity:** Provide narrative information on recent, similar, and successful experience in affordable housing development. Include experience using multiple fund sources and previous working history with the Austin Housing Finance Corporation, if any.
 - i. **If developer is a non-profit**
 - 1. Federal IRS certification granting non-profit tax-exempt status

2. Certified financial audit for most recent year - Include the auditor's opinion and management letters
3. Board resolution approving the proposed project and authorizing the request for funding

ii. **If developer is a for-profit**

1. Current financial statement
2. Proof of sufficient reserves or a line of credit available, if necessary, to complete the proposed project

2. DEVELOPMENT TEAM

- a. List of persons or entities anticipated to be involved in the project (i.e. lenders, attorneys, accountants, architects, engineers, general contractor, sub-contractors, consultants);
- b. Include contact information and indicate if any person or entity involved is certified by the City of Austin as a minority or women-owned business enterprise (**MBE/WBE**), or if any of the entities are also **non-profit** organizations.
- c. Curriculum Vitae for all members of the Development Team highlighting relevant experience in the development of affordable housing

3. PROJECT PROPOSAL

- a. **Project Description:** Applicants shall provide a brief project description to include the following details:
 - i. Describe the proposed tenant population, income levels, and services, if any, to be provided to or made available to residents.
 - ii. Indicate the number of units reserved for Housing Choice Voucher holders (Section 8).
 - iii. Indicate the number of units that are or will be made accessible and adaptable for persons with mobility, sight or hearing disabilities.
 - iv. If applicable, demonstrate the Project's compatibility with current Neighborhood Plan.
 - v. Summarize the key financials of the project, clearly indicating the total project cost, the amount and intended use of AHFC/NHCD funds being requested, and the amount(s) and provider(s) of other funding and the status of those funding commitments.
 - vi. If the property is occupied by residents at the time of application submission, specify that along with the following additional information: Include details on the type of structure (multi-family or single-family), number and size of units in square feet.

- vii. Indicate whether the project meets the requirements of the City's Vertical Mixed-Use (VMU) Ordinance, or is in a Planned-Unit Development (PUD) or Transit Oriented Development (TOD) or any other City of Austin density bonus program.
 - viii. Indicate how the project will meet S.M.A.R.T. Housing requirements.
- b. **Market Assessment** Applicants should address *pricing* and *absorption* relating to the whole project, and not just the units being funded. Market analysis should also include the following:
- i. **Evaluate general demographic, economic, and housing conditions** in the community. Including;
 - 1. Identifying the target population(s) of the development, and area demographic makeup
 - 2. Evaluating overall economic conditions and trends
 - 3. General housing conditions and trends in the community
 - ii. **Identify the geographic area** from which the majority of a project's tenants or buyers are likely to come. Identify the primary market/geographic area, based on US census tract or neighborhood boundaries
 - iii. **Quantify the pool of eligible tenants** or buyers in terms of household size, age, income, tenure, and other relevant factors.
 - iv. **Analyze the competition** by evaluating other housing opportunities with an emphasis on other affordable rental developments or sales opportunities in the market area. Identify comparable units based on location, year of construction, target population, property condition, unit mix, unit amenities, and occupancy and turnover.
 - v. **Assess the market demand** for the planned units and determine if there is sufficient demand to rent/sell the units.
 - vi. **Evaluate the effective demand and the capture rate**, usually expressed as a percentage (the project's units divided by the applicant pool). The capture rate is the percentage of likely eligible and interested households living nearby who will need to rent units in the proposed project in order to fully occupy it. The lower this rate, the more likely a project is to succeed.
 - vii. **Estimate the absorption period**. Plan how many units can be successfully leased or sold each month and how long it will take to achieve initial occupancy/sale of the units and stabilized occupancy for the project as a whole. Absorption should be calculated using comparable units only.
- c. **City of Austin Good Neighbor Policy** In response to Austin City Council Resolution 20110113-040, a Good Neighbor Policy was developed to foster a broad community dialogue that includes stakeholders from neighborhoods to establish successful approaches for integrating low-income housing throughout the City. For more information, please see the **City of Austin Good Neighbor Guidelines**.

i. **Prior to submission of an OHDA Application, the developer must:** Research the applicable City of Austin Neighborhood Plan for the area in which the project is to be located. If no adopted neighborhood plan exists, then this step is omitted. Using written notice by letter or by flyer, notify: property owners with properties no less than 500 feet from the proposed development site; and registered neighborhood organizations whose boundaries include the proposed development site. Engage with neighborhood organizations whose boundaries include the proposed development site in order to provide current information about the project. Appoint a Single Point of Contact (SPOC) to serve as the liaison for exchanging information.

ii. **Submit with the completed OHDA Application:**

1. The developer's communication plan for engaging stakeholders and neighborhood organizations.
2. Documentation of written notice provided to property owners and neighborhood organizations.
3. A signed City of Austin Good Neighbor Checklist

d. **S.M.A.R.T. Housing** All new construction projects will be required to obtain S.M.A.R.T. Housing certification prior to loan application. S.M.A.R.T. Housing is not applicable to rehabilitation projects. The S.M.A.R.T. housing program certification letter must be submitted along with the application. Program details and contact information are available on NHCD's website. The S.M.A.R.T. Housing letter must be dated no more than six months prior to the application deadline.

4. **PROPERTY**

a. **Map of the property** Attach a map generated by the City of Austin ArcGIS showing the location of the development in reference to the geographic priorities established in the Strategic Housing Blueprint, such as:

- i. High Opportunity Census Tracts
- ii. Tracts at risk of Displacement or Gentrification
- iii. Imagine Austin Centers and Corridors with 0.5 mile buffer
- iv. High-Frequency Transit Stops with 0.25 mile walk
- v. Transit Stops with 0.75 mile walk
- vi. Mobility Corridor with 0.5 mile buffer
- vii. Healthy Food Access with 1 mile buffer
- viii. 100 year Flood Plain

b. **Real Estate Appraisal** Acquisition of land or existing residential properties are eligible only if the acquisition price is equal to or less than the fair market value of the property.

Applicants should provide one of the following to demonstrate fair market value of property.

- i. a pre-construction appraisal on the property to be acquired, conducted less than six months prior to receipt of a funding application by AHFC/NHCD;
 - ii. an appraisal for comparable properties within the same neighborhood, conducted less than six months prior to receipt of a funding application by AHFC/NHCD or
 - iii. a tax assessment (less than one year old) for the property or for comparable properties within the same neighborhood
- c. **Zoning Verification Letter** Include a letter from the City of Austin's Planning and Zoning Department (PZD) verifying that the current zoning of the site for the proposed project is compatible with the anticipated use, or include documentation verifying that a request to change current zoning has been submitted to PZD. Should the project be approved for funding, the appropriate zoning must be in place prior to execution of loan documents
- d. **Proof of Site Control**
- i. Include evidence of site control such as a warranty deed or a current earnest money contract, and provide a real estate appraisal or current tax documentation that substantiates the value of the property.
 - ii. If there are existing structures, provide documentation from the taxing authority or another third-party source indicating the year the structure was built.
- e. **Phase I Environmental Assessment**
- i. Applicants must provide a Phase I Environmental Site Assessment (ESA) report prepared by qualified environmental professionals.
 - ii. Applicants must provide mitigation strategies for concerns raised in the Phase I ESA report
 - iii. City of Austin's Austin Resource Recovery Department provides free environmental assessments for eligible entities. For more information contact the Brownfields Office: brownfields@austintexas.gov, 512-974-6085.
- f. **State Historical Preservation Officer Consultation** Section 106 of the National Historic Preservation Act of 1966, requires federal agencies to consider the effects of their undertakings on historic properties and consult with the State Historic Preservation Officer (SHPO). If there are any buildings, structures, designed landscape features (such as parks or cemeteries), or historic districts, 45 years old or older and potential or known archeological resources within the project area, consultation with the SHPO is required. Information required for SHPO consultation is available at: http://www.thc.texas.gov/public/upload/forms/SHPO_Consultation_Form_Instructions-Ver0811.pdf

The applicant needs to provide the required information (including maps, photographs etc.) along with the application and AHFC/NHCD will conduct the SHPO consultation as required.

D. Application Scoring

All applications are assessed against the quantitative goals and initiatives detailed in the Austin Strategic Housing Blueprint, Implementation Plan, and Atlas of Existing and Historical Conditions. Any application for funding must achieve a minimum threshold score to be considered under additional stages of review. **Submission of an application that meets or exceeds the minimum score is not a guarantee that the proposed project will be funded.**

1. **Unit Score** Unit scores are based upon the percentage of the goal achieved through the proposed development. Units with deeper affordability are given an additional weight.
 - a. **District Goal** The Austin Strategic Housing Blueprint Implementation Plan has identified specific numerical goals for each Council district to achieve the overall goal of creating or preserving 60,000 housing units affordable to households at or below 80% median family income (MFI) by 2027.
 - b. **High Opportunity Areas** 15,000 units of affordable housing will be placed in areas of Higher Opportunity, defined as those areas with high measures of upward mobility and positive socioeconomic outcomes for existing residents. High Opportunity areas are Census Tracts that rank above average for at least six of the nine Opportunity 360 Indices. District goals are established by the proportion of Opportunity Areas in each district as of the adoption of the Austin Strategic Housing Blueprint Implementation Plan.
 - c. **High-Frequency Transit** 15,000 units of affordable housing will be placed in areas which are within a quarter-mile of High-Frequency Transit routes. High-frequency refers to a transit route that provides service every 15 minutes or better throughout most of the day, on weekdays and weekends. As Capital Metro continues to implement Project Connect, more areas will be served by High-Frequency Transit. District goals are established by the proportion of high-frequency transit in each district as of the adoption of the Austin Strategic Housing Blueprint Implementation Plan.
 - d. **Imagine Austin Centers and Corridors** In 2012, the City of Austin adopted the Imagine Austin Comprehensive Plan which established a vision of the City in 2039. This vision includes a network of activity centers and corridors which have been identified as future transit-oriented, mixed-use centers of activity connected by walking, bicycling, transit, or automobile. 15,000 units of affordable housing will be placed in areas which are no more than one half mile of Imagine Austin Centers and Corridors. District goals are established by the proportion of Imagine Austin Centers and Corridors in each district.
 - e. **High Displacement Risk Areas** 15,000 units of affordable units will be placed in High Displacement Risk Areas, as defined by “Uprooted: Residential Displacement in Austin’s Gentrifying Neighborhoods and What Can Be Done About It,” a report on gentrification and displacement produced by researchers at the University of Texas at Austin. High Displacement Risk Areas are measured at the Census Tract level. District goals are established by the proportion of High Displacement Risk Areas in each district.

- f. **Geographic Dispersion** 15,000 units of affordable housing will be placed according to the geographic dispersion of affordable housing units within the ten Council districts as of the adoption of the Austin Strategic Housing Blueprint Implementation Plan. A primary goal of the Strategic Housing Blueprint has been to maximize geographic dispersion of subsidized affordable units across the city. Districts which have fewer units received a higher proportion of the 15,000 units.
 - g. **Mobility Bond Corridors** Austin voters approved \$720 million in bonds in 2016 for transportation and mobility improvements throughout the city. The 2016 Mobility Bond Corridors were analyzed using the University of Texas' Corridor Housing Preservation Tool to establish affordable housing production and preservation goals within one half mile of each corridor scheduled for improvements through the 2016 Mobility Bonds.
2. **Initiatives and Priorities Score** The Austin Strategic Housing Blueprint establishes a set of initiatives and priorities for the production of affordable housing units and the targeted populations that these units are intended to serve. These initiatives also receive an additional weighted score based upon the Opportunity 360 indices that would best serve the targeted populations
- a. **Multi-generational Housing** The Blueprint calls for no less than 25% of all affordable housing units to have two or more bedrooms and a system to provide opportunities for families with children. Family Friendly units are scored as a percentage of the total affordable units provided. Family Friendly units are weighted with the following factors:
 - i. Cumulative TEA letter grade of the Elementary, Middle, and High School attendance zones
 - ii. Educational Attainment
 - iii. Environment
 - iv. Community Institutions
 - v. Social Cohesion
 - vi. Economic Security
 - b. **Accessible Housing** In all new developments funded through the OHDA program, 100% of all ground floor units will be adaptable for individuals with mobility or sensory impairments. No less than 25% of all affordable units will be accessible. Applications must state the number of units that will be accessible to individuals with mobility impairments and the number of units accessible to individuals with sensory impairments. These units will be scored as a percentage of the total number of affordable units. Accessible Housing will be weighted with the following factors:
 - i. Housing Stability
 - ii. Health
 - iii. Mobility

iv. Community Institutions

3. **Financial Score** The financial score for a proposal is based on four metrics to determine the most reasonable use of OHDA funds.
 - a. **Debt Coverage Ratio** Debt coverage ratio must be provided as part of the Operating Pro Forma. Debt coverage ratio should be between 1.00 and 1.50.
 - b. **Leverage** A maximum leverage ratio for OHDA assisted project is established as no more than 50% of the total project cost. A lower ratio represents a greater leveraging of OHDA funds.
 - c. **Cost per Unit** The total OHDA assistance requested is divided by the proposed total number of units affordable to households below 50% of the median family income. A lower amount of assistance per unit represents a stronger investment for OHDA funds.
 - d. **Cost per Bedroom** Multiple-bedroom units cost more to develop than single-bedroom units. To compensate for this increased cost the cost per bedroom is scored along a similar scale to the cost per unit. The total amount of OHDA assistance requested is divided by the total number of bedrooms proposed within the units affordable to households below 50% of the median family income. A lower amount of assistance per bedroom represents a stronger investment for OHDA funds.

E. **Underwriting Panel Review**

Applications that meet the minimum threshold requirements are reviewed and scored by a panel of AHFC/NHCD staff members with expertise in evaluating different aspects of the application. The panel reviews the application and all required documentation to produce a draft underwriting report. The underwriting report will address applicant capacity including financial capacity; development team and project management history; project feasibility; and property assessment. If applicable, operating projections must generally meet HOME Subsidy Layering parameters outlined in HUD-CPD Notice 98-01.

F. **Housing Investment Review Committee**

The Housing Investment Review Committee (HIRC) is a group of persons appointed by the NHCD Director and charged with reviewing all Rental Housing Development Assistance and Ownership Housing Development Assistance funding applications. The purpose of their review is to ensure that applications have been scored and are in compliance with the OHDA Program Guidelines. The role of the HIRC is advisory only. The HIRC does not have the authority to recommend or disapprove of applications, but can concur or not with staff's scoring of an application. Meetings of the HIRC are public meetings, but is not subject to the requirements of Chapter 2-1 of the City of Austin Code of Ordinances.

G. **NHCD Executive Team**

Applications that are likely to be recommended for funding will receive further consideration by the AHFC/NHCD executive team. Applications that are approved by the executive team for a funding recommendation will be notified by a Recommended for Funding letter. The Recommended for Funding letter outlines the next steps in the application review process and an expected date for a final decision by City Council.

H. Final Decision

Based on the funding amount requested, the final decision to fund an application is determined by the Austin City Council or the Austin Housing Finance Corporation. The developer will be informed of the final decision by a Funding Award Letter.

VI. LOAN DISBURSEMENTS

Once a Loan Agreement has been executed between AHFC and a Borrower for the purpose of developing housing according to these OHDA Program Guidelines, if there is a conflict between these OHDA Program Guidelines and the project's Loan Agreement, the terms of the Loan Agreement shall prevail.

- A. **Payments** will be made to Developers/Owners for eligible project costs according to the conditions described in the AHFC Loan Agreement. Eligible project costs must be documented with each request for payment for the purpose of supporting the amount requested. AHFC will verify the work completed and determine the eligible amount to be paid. The method of invoicing AHFC for a disbursement of loan proceeds shall be described in each loan agreement. The AHFC retains the right to withhold or temporarily suspend payments if the Borrower:
1. has failed to perform on any existing loan (whether one or more) from AHFC in accordance with the terms and conditions of the Loan Agreement(s);
 2. is behind in submitting required, timely or incomplete reports, documents or information required or reasonably requested by AHFC,
 3. fails to comply with any OHDA loan agreement covenants; or
 4. has not resolved any outstanding monitoring findings or concerns identified by the AHFC within a specified time period.
- B. At such time that the Borrower has adequately addressed the identified deficiencies, and in AHFC's sole discretion, AHFC may resume project payments. The list above is not intended to be all-inclusive, and the terms and conditions of the Loan Agreement shall further describe penalties for non-performance or non-compliance by the Borrower.

VII. REGULATORY REQUIREMENTS

The borrower has to comply with the following requirements at each stage of the process including application, construction, post construction, leasing, affordability etc.

A. City of Austin Visitability Ordinance

All single-family, duplex and triplex dwellings newly constructed with financial assistance provided through AHFC/NHCD must be visitable in accordance with the City of Austin Visitability Ordinance No. 981007-A.

- B. **"Section 3" Compliance.** "Section 3" refers to Section 3 of the Housing and Urban Development Act of 1968, as amended, (12 U.S.C. 1701u). It requires that recipients of certain HUD financial assistance, to the greatest extent feasible, provide job training, employment, and contracting opportunities for low- or very-low income residents in connection with projects and activities in their neighborhoods.

1. The Section 3 requirements apply to recipients of Housing and/or Community Development Assistance exceeding \$200,000 combined from all sources in any one year. Section 3 covers the expenditure of any portion of those funds for any activity that involves housing construction, rehabilitation, or other public construction.
2. All contractors or subcontractors that receive covered contracts in excess of \$100,000 for housing construction, rehabilitation, or other public construction are required to comply with the requirements of Section 3.
3. Because NHCD receives HUD funding, Section 3 requires NHCD to ensure that employment and other economic and business opportunities generated by the HUD funding will, to the greatest extent feasible, be directed to:
 - a. Qualified low- and very low-income persons residing in the metropolitan area - "Qualified" means the prospective employee has the proper qualifications for the work to be performed. "Low-income persons" means families (including single persons) whose total household incomes are at or below 80 percent of the Median Family Income for the Austin-Round Rock-San Marcos, TX Metropolitan Statistical Area (MSA). "Very-low income persons" means families (including single persons) whose total household incomes do not exceed 50 percent of the Median Family Income for the Austin-Round Rock-San Marcos, TX MSA. "Metropolitan Area" means the 5-county Austin-Round Rock, San Marcos, and TX MSA which includes Bastrop, Caldwell, Hays, Travis, and Williamson counties.
 - b. Businesses that employ low- to very-low income persons means a business that has at least 30% of its employees who are Section 3 Residents or those that within three years of the date of first employment with the business were Section 3 Residents.
 - c. Businesses that are owned by low- to very low-income persons- means a business that is 51% or more owned by a Section 3 Resident.
 - d. Businesses that provide evidence of a commitment to subcontract in excess of 25% of the dollar amount of all subcontracts to be awarded to businesses that meet the following qualifications: "means businesses that provide a certification or actual proof that they have subcontracted or currently have subcontracts with businesses owned by Section 3 Residents

Guidance on how to comply with the requirements of Section 3 can be found in the Neighborhood Housing and Community Development Office's Section 3 plan.

C. Davis Bacon requirements

The Davis-Bacon and Related Acts, apply to contractors and subcontractors performing on federally funded or assisted contracts in excess of \$2,000 for the construction, alteration, or repair (including painting and decorating) of public buildings or public works. Davis-Bacon Act and Related Act contractors and subcontractors must pay their laborers and mechanics employed under the contract no less than the locally prevailing wages and fringe benefits for corresponding work on similar projects in the area.

D. Environmental Review

AHFC/NHCD requires that the owner of a project provide a Phase I Environmental Review prior to executing loan documents to ensure that no environmental hazards exist on or near the project site. For acquisition and/or rehabilitation of properties built prior to 1979, the project must include an inspection for asbestos prepared by a firm certified by the State of Texas. The developer must submit mitigation plans for environmental concerns such as presence of toxic substances, underground storage tank, elevated noise levels etc. noted in the Phase I Environmental Review. Environmental reviews are required to be submitted by NHCD to HUD for all federally funded projects.

E. Lead-Based Paint

All owners/developers using OHDA funds on a project are required to provide tenants of pre-1978 housing with the *Protect Your Family from Lead in Your Home* brochure and document receipt of the document. The Borrower is responsible for obtaining the brochure and the appropriate disclosure forms from AHFC/NHCD. If a Project has the potential for lead-based paint hazards, the owner/developer must ensure that the required procedures for testing of surfaces, completion of the rehab work, further testing and clearance examinations on the property are followed throughout the project, and that all personnel conducting those activities have obtained the appropriate state certifications to authorize their work. For any project involving non-exempt activities, the owner/developer must work closely with AHFC to design a detailed plan to abate the hazard.

F. Contractor Selection

Owners/developers shall provide to AHFC/NHCD, construction specifications and costs estimates for work proposed. To ensure completeness, cost efficiency and market competitiveness, AHFC/NHCD will review the project specifications and associated costs that will be mutually agreed to by both parties. Owners/developers will select construction contractors most capable to complete the project in accordance with the approved specifications and costs. AHFC/NHCD will conduct on-site inspections at various intervals throughout the construction of the project to assure the project is completed as required.

G. Debarment and Suspension

Owners and contractors are prohibited from employing, awarding contracts, or funding any contractors or subcontractors that have been debarred, suspended, proposed for debarment, or placed on an ineligibility status by the federal government, or by the City of Austin. In addition, any owners who are debarred, suspended, proposed for debarment, or placed on an ineligibility status by the federal government will be prohibited from receiving OHDA funding. Developers are required to screen the status of all contractors and subcontractors by consulting the "System for Award Management" or "SAM" website at www.sam.gov.

H. Fair Housing Opportunity

The Borrower must comply with:

1. The requirements of the Fair Housing Act (42 U.S.C. 3601-20) and implementing regulations at 24 CFR part 100: Executive Order 11063, as amended, (Equal Opportunity in Housing) and implementing regulations at 24 CFR part 107; and Title VI of the Civil Rights Act of 1964

- (42 U.S.C. 2000d) (non-discrimination in Federally Assisted programs) and implementing regulations issued at 24 CFR Part 1;
- 2. The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101-07) and implementing regulations at 24 CFR Part 146;
- 3. The prohibitions against discrimination against handicapped individuals under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR Part 8; and
- 4. The requirements of Executive Order 11246 (Equal Employment Opportunity) and the implementing regulations issued at 41 CFR Chapter 60.
- 5. The prohibitions against discrimination based on actual or perceived sexual orientation, gender identity or marital status under the requirements of the Equal Access to Housing Rule, also known as the Lesbian, Gay, Bisexual, or Transgender (LGBT) Rule, published as additions and revisions to the non-discrimination provisions in 24 C.F.R. Part 5.

I. Fair Housing in Marketing

- 1. In projects of five (5) or more units, project developers/owners/sponsors will be required to use affirmative fair housing marketing practices in soliciting tenants in determining eligibility and concluding all transactions. Each participating entity must affirmatively further fair housing in the same manner as a project that is required to comply with 24 CFR 92.351. These requirements include:
 - a. AHFC/NHCD will require the project owner to solicit applications for vacant units from persons in the housing market who are least likely to apply for the rehabilitated housing without benefit of special outreach effort.
 - b. Advertising for vacant units must include the equal housing opportunity logo or statement. Advertising media may include newspapers, radio, television, brochures, leaflets, etc.
 - c. The project owner must maintain a file containing all marketing efforts (i.e. copies of newspaper ads, memos of phone calls, copies of letter, etc.) to be available for inspection at least annually by AHFC/NHCD.
 - d. The project owner shall maintain a listing of all tenants residing in each unit at the time of requesting assistance throughout the entire compliance period.
- 2. Where an owner fails to follow the affirmative marketing requirements, corrective actions shall include extensive outreach efforts to appropriate contacts to achieve the occupancy goals or other sanctions AHFC/NHCD deems necessary.

J. Insurance Requirements

Project developers/owners shall obtain, maintain and keep in full force and effect insurance coverages for general liability, auto, and property hazard insurance in such amounts and in such manner as required by the AHFC's Loan Agreement. The insurance provisions need to be verified and approved by the City of Austin Risk Management Department prior to final submission to AHFC/NHCD. OHDA program funds may not be used in connection with the rehabilitation of a property located in an area identified by

the Federal Emergency Management Agency (FEMA) as having special flood hazards unless flood insurance is obtained and maintained throughout the term of the loan.

K. Audit Requirements for Non-Profit Developers

Non-profit developers/owners must submit to the AHFC/NHCD a complete set of audited financial statements and the auditor's opinion and management letters in accordance with 24 CFR 84.21, and the Single Audit Act of 1984, as amended, covering each fiscal year until the termination of this Loan Agreement. Developer must use the procedures outlined in the Loan Agreement for securing the audit.

L. Non-Discrimination

AHFC/NHCD is committed to compliance with the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973, as amended. Reasonable modifications and equal access to communications will be provided upon request. Please call 974-3100 (voice) or 974-3102 (TDD) for assistance. For a sign language interpreter, please call 974-3100 at least four to five days in advance. The AHFC/NHCD does not discriminate on the basis of disability in the admission or access to, or treatment or employment in, its programs and activities.

VIII. OCCUPANCY REQUIREMENTS

A. Affordability Period

When OHDA funds are used to assist projects, income and sales restrictions apply to the OHDA-assisted units for a defined period of time called the "affordability period." A project's affordability period is enforced using a legally binding document, a "Restrictive Covenant Running with the Land" that will be filed for record in the Official Public Records of the County. All OHDA funded projects are required to be affordable for a 40-year minimum period regardless of the funding amount. The preferred affordability period will be for a period of not less than 99 years, using either of two ownership models, a Community Land Trust (CLT) model of homeownership, or the "Right of First Refusal/Shared Equity" model. AHFC/NHCD, at its discretion, may require a project to utilize a longer affordability period than those stated above. The affordability period shall not be shortened for any reason, including if the loan is repaid before the end of the affordability period. Affordability requirements and restrictions will remain in force throughout the Affordability Period regardless of transfer of ownership unless ownership of the property is transferred through foreclosure proceedings.

The AHFC Treasurer/NHCD Director may waive the 40-year affordability requirement for mission-based, non-profit affordable housing providers (via "Memorandum to File") provided that long-term affordability is otherwise secured through a Right of First Refusal/Shared Equity model. An example is a waiver for a project undertaken by a non-profit organization whose parent organization's policies allow for affordability periods to run with the length of the mortgage (e.g. 30 years), but do not permit 40-year mortgages on the homes. While the 40-year affordability period may be waived in rare cases, it is understood that the actual affordability period under this ownership model could end up being perpetual.

The "Right of First Refusal/Shared Equity" model also uses a resale formula whereby the organization (usually a non-profit) that originally sold the affordable home has the opportunity to purchase the home from the original buyer and receive a predetermined percentage of any increase in equity realized, plus any amount of subsidy provided to the buyer to make the home affordable. Upon re-sale, the organization's share of the equity will be used to provide a subsidy to the next low- to moderate-income buyer to make the home affordable. The new buyer will sign a Right of First Refusal, a note for the amount of subsidy

provided and a deed of trust. The note signed by the buyer will contain the resale formula that will be used when the house is next sold. This is another method of keeping housing affordable in perpetuity.

B. Income and Occupancy Requirements

OHDA-assisted units are allowed to be sold to households earning at or below 80% MFI. Throughout the established Affordability Period, AHFC/NHCD will control the resale of the property either by using resale provisions or by using recapture provisions, depending on the type of assistance provided, and as further described in the AHFC/NHCD Resale and Recapture Policies and Procedures document.

1. **Income Determination Method:** Whether the project is funded with CDBG, HOME, or locally sourced funds, the Applicant shall determine income eligibility of each household using the method established in 24 CFR § 5, commonly referred to as the “Section 8” method of income determination prior to executing the sales contract. Guidance on determining whose income to count, what type of income must be included or is excluded, and the calculation of imputed income from assets is found in HUD’s *Technical Guide to Determining Income and Allowances for the HOME Program*. This guidance for income calculation should be followed regardless of funding source. AHFC must review applicable source documentation to verify annual income prior to executing the sales contract. Income qualifications must be completed in accordance with the timeframes outlined above, and need not be reexamined at the time the assistance is actually provided.
2. The low-income household shall be income eligible according to the following timing:
 - a. In the case of a contract to purchase existing housing, at the time the purchase contract is signed
 - b. In the case of a contract to purchase housing to be constructed, at the time the purchase contract is signed.
 - c. If a low-income household was qualified longer than six months before a purchase contract is signed, they must be re-qualified prior to the purchase.
3. **Principal Residence:** Purchasers of OHDA-assisted affordable housing must occupy the properties as their principal residence for the applicable term of the affordability period. The subject property cannot be used for rental, commercial or any other purpose other than their principal residence. This requirement will be reflected in a restrictive covenant running with the land and/or in loan documents between the purchaser and the AHFC/NHCD. AHFC/NHCD may take such additional measures deemed necessary to ensure and/or enforce compliance with this requirement.
4. **Ownership:** The program requires ownership of the property using one of the approved forms of ownership described below. Families and individuals own the property if they:
 - a. Have fee simple title to the property, or
 - b. Maintain a 99-year leasehold interest in the property through a Community Land Trust or other similar vehicle, or
 - c. Own a condominium, or

- d. Own or have a membership in a cooperative or mutual housing project that constitutes homeownership under Texas law, or
 - e. Maintain an equivalent form of ownership approved by the AHFC
5. **Homebuyer Education:** Home buyer education is required for potential homebuyers and is provided by AHFC/NHCD or a partner agency, or an approved home buyer education provider. Applicants who have taken a homebuyer education class in the past 5 years (from the date of closing) may provide documentation. If applicants have never taken a homebuyer course before, they must complete a Pre-purchase Home buyer Education Program equivalent to the City's Program prior to the purchase of the home.
 6. **Restrictive Covenant/Ground Lease Meeting:** Homebuyers are required to attend a meeting with AHFC/NHCD staff prior to closing, to receive information on restrictive covenants, ground lease terms and other applicable affordability terms and conditions and associated documentation.
 7. **Accessible and Adaptable Units:** Assistance may not be used for the purpose of building or acquiring units that will not allow an AHFC/NHCD determined portion of the units to be made accessible to persons with disabilities (townhouses, walk-ups, structures on impractical sites, etc.). Projects must contribute to increasing the number of accessible and/or adaptable units available to persons with disabilities through the following minimum requirements:
 8. **Rehabilitation Projects:** The higher of one (1) unit or 10% of all units rehabilitated must be made accessible for persons with mobility disabilities. In addition, the higher of one (1) unit or 2% of all units rehabilitated must also be made adaptable for persons with hearing and/or visual disabilities.
 9. **New Construction Projects:** The greater of one (1) unit or 10% of all new units constructed must be accessible to persons with mobility disabilities, and all other ground floor units constructed must be adaptable to accommodate the needs of persons with mobility disabilities. In addition, the greater of one (1) unit or 2% of all new units constructed must also be accessible to accommodate the needs of persons with hearing and/or visual disabilities. All projects receiving assistance must comply with accessibility design standards established by the City's S.M.A.R.T. Housing™ Ordinance.
 10. **Distribution of Accessible Dwelling Units:** All ground-floor units for multi-family housing developments must be adaptable. To the greatest extent possible, accessible dwelling units should be distributed on ground-floor units throughout the project and should be available in a sufficient range of sizes and amenities so that: an individual with disabilities' choice of dwelling units is comparable to that of other prospective tenants; and accessible dwelling units are not concentrated in one area of the property. This should not be construed as a requirement to install an elevator for the sole purpose of allowing accessible units to be located above the ground floor.
 11. **Occupancy of Accessible Dwelling Units:** To Owners/managers of multifamily projects that have accessible units should ensure that information regarding the availability of accessible units reaches individuals with disabilities. In addition, owners/managers of multifamily projects that have accessible units should take non-discriminatory steps to maximize the

utilization of accessible units by qualified individuals with disabilities whose disability requires the accessibility features of a particular unit. This can be done by maintaining a waiting list for accessible units and offering vacant accessible units to applicants in the following order:

- a. First, to a current occupant of another unit in the same property, or other comparable property within the owner's/manager's control, who has a disability requiring the accessibility features of the vacant unit and who currently occupies a unit that does not have those features.
- b. Second, to a qualified applicant on the waiting list who has a disability requiring the accessibility features of the vacant unit
- c. Third, to a qualified applicant who does not have a disability requiring the accessibility features of the unit; however, the owner/manager may incorporate language in the lease that the applicant will agree to move to a non-accessible unit when one becomes available.

IX. COMPLIANCE AND MONITORING

- A. Borrowers must maintain complete and accurate books of account and other records reflecting the results of the development of the property and shall furnish, or cause to be furnished, to AHFC/NHCD:
 1. immediate notice of any material adverse change in the property's financial condition or business prospects or any lapse of coverage with respect to the Insurance Requirement;
 2. all reports required by the AHFC Loan Agreement and Statement of Work; and
 3. Upon request of monitors, and at developer's expense, such other operating, financial, insurance coverage and credit information as may be reasonably requested with respect to the property.
- B. During Construction and until completion of initial leasing of the property, developers must submit monthly project updates to AHFC/NHCD.
- C. Developer must submit an affirmative marketing report to AHFC/NHCD prior to completion of construction.
- D. Prior to sale or resale of any OHDA assisted unit, the seller must submit to AHFC/NHCD all documents required for income certification. After closing on any OHDA assisted unit, all necessary documents as detailed in the loan agreement, including the Restrictive Covenants signed by the purchaser, must be submitted to AHFC/NHCD.

X. DEFAULT ACTIONS AND SANCTIONS

- A. AHFC/NHCD retains the right to determine, in its/their sole discretion, whether a default has taken place in an OHDA funded project. AHFC/NHCD may exercise default actions if it is determined that the default or violation(s) of the terms and conditions of the executed agreement has or may take place by the developer of the developer project. A default or violation may be facilitated as a result of action or inaction taken by the project developer, organization, and agency, contractor, individual or duly appointed representative of the developer or developer project. **A default or violation may include, but not be limited to the following:**

1. Developer or developer's project fails to address adequately or violates the applicable local, state or federal rules and/or regulations governing the acquisition, construction and/or initial occupancy requirements of the project, or
2. Any breach of any provision contained in the loan document , or
3. If OHDA Program funds are used for any purpose other than authorized in the OHDA Program contract, or any breach of any provision of OHDA guidelines as attached to the executed loan document except where the loan documents contradicts the guidelines, then the loan document will control or
4. The appropriate proportion of assisted-units are not maintained for the term of the loan, or
5. There is a change in use of property prior to repayment of AHFC/NHCD without prior review and written approval, or
6. Property is not maintained in compliance with City of Austin Code of Ordinances and/or to federal Uniform Property Code standards
7. Developer fails to comply with information submitted by the developer to AHFC/NHCD through the project selection process, or
8. Developer or developer's project fails to maintain adequate documentation in support of project requirements.

B. Default sanctions available to AHFC/NHCD may include, but not be limited any one or any combination of the following:

1. Call the project note due and payable in accordance with the terms and conditions of the note;
2. Call the note due and payable for the full amount of AHFC/NHCD funds provided to the project;
3. Temporarily suspend the project until corrective action is taken;
4. Terminate the agreement and associated documents with the project;
5. Request a review or investigation by local or federal authorities if applicable;
6. Debar the project organization or individual from consideration of any future funding opportunities from AHFC/NHCD.

C. According to the terms of the Loan Documents, should AHFC/NHCD exercise any of the above referenced sanctions, AHFC/NHCD will provide written notice at the Borrower's address as stated in the Loan Agreement. AHFC/NHCD shall make the final determination as to whether any proposed corrective action undertaken as the result of an event of default is sufficient to cure the default.

XI. APPEALS/GRIEVANCE PROCESS

Persons aggrieved by any action or inactions of the program which occurs in the implementation of these guidelines, and who wish to appeal said action or inaction, must do so by submitting an appeal in writing to

the Community Development Manager within 30 days of the action or inaction deemed aggrieving by said person(s).

Complaints received over the phone or email must be documented by staff. The Community Development Manager is charged with reviewing an appeal or grievance. He/she shall submit to the Department Director/Treasurer of AHFC a written summary of each grievance received along with explanations of the administrative action taken or recommended, within 30 calendar days of his/her receipt of a written grievance. The Director has 15 days from receipt of the written appeal to respond to the aggrieved person with a final decision.


When a program beneficiary complains to the HUD Field Office, it is referred to NHCD. NHCD has to respond to the complainant within fifteen (15) calendar days of receipt of the referral and to send a copy of its response to the Field Office. The Field Office, at its discretion, may extend the NHCD's response period to thirty (30) days where appropriate.

Approved by:



Rosie Truelove

Treasurer, AHFC



Date